

1 STEVEN V. RHEUBAN (SBN: 48538)
2 SOLOMON E. GRESEN (SBN: 164783)
3 LAW OFFICES OF RHEUBAN & GRESEN
15910 Ventura Boulevard, Suite 1610
4 Encino, California 91436
Telephone: (818) 815-2727
Facsimile: (818) 815-2737

5 Attorneys for Plaintiffs

RECEIVED

APR 2 2010

Mitchell Silberberg & Knupp LLP

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 OMAR RODRIGUEZ; CINDY GUILLEN-
11 GOMEZ; STEVE KARAGIOSIAN; ELFEGO
12 RODRIGUEZ; AND JAMAL CHILDS,

13 Plaintiffs,

14 v.

15 BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
16 100, INCLUSIVE,

17 Defendants.

18 BURBANK POLICE DEPARTMENT; CITY
OF BURBANK,

19 Cross-Complainants,

20 v.

21 OMAR RODRIGUEZ, an Individual;

22 Cross-Defendant.

CASE NO. BC 414602

Date: May 12, 2010

Time: 9:00 a.m.

Judge: Honorable Joanne O'Donnell

Dept.: 37

**PLAINTIFF'S SEPARATE STATEMENT
OF DISPUTED FACTS IN OPPOSITION
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION OF ISSUES AGAINST
PLAINTIFF ELFEGO RODRIGUEZ**

**[NOTICE OF MOTION AND MOTION,
MEMORANDUM OF POINTS AND
AUTHORITIES, EVIDENCE IN
SUPPORT, APPENDIX OF NON-
CALIFORNIA AUTHORITIES FILED
CONCURRENTLY HEREWITH]**

File Date: May 28, 2009

Trial Date: August 25, 2010

Discovery Referee: Hon. Diane Wayne, Ret.

Pursuant to California Civil Procedure Code Section 437c(b)(1) and Rule 3.1350 of the California Rules of Court, Defendant and Cross-Complainant City of Burbank, including the Police Department of the City of Burbank (erroneously sued as an independent entity named "Burbank Police Department") ("Burbank") submits the following Separate Statement of Undisputed Material Facts, together with references to supporting evidence, in support of its Motion for Summary Judgment or, in the Alternative, Summary Adjudication of issues against Plaintiff Elfego Rodriguez ("Rodriguez"). Each of the following facts is undisputed only for purposes of Burbank's Motion for Summary Judgment or, in the Alternative, Summary Adjudication of issues against Rodriguez:

FIRST CAUSE OF ACTION

(Discrimination under the California Fair Employment and Housing Act ("FEHA"))

Issue No. 1: The First Cause of Action for discrimination under the FEHA, as set forth in the First Amended Complaint ("FAC"), includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from a Special Enforcement Detail ("SED") assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, the transfer from SED to Patrol is not an actionable "adverse employment action," which is a necessary element of the prima facie case for discrimination.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
1. The Special Enforcement Detail unit ("SED") was a unit that assisted Burbank Police Department ("BPD" or "Department") detectives. <i>Supporting Evidence:</i> Deposition of Elfego Rodriguez ("Rodriguez Depo."), (cited pages of	Disputed. The SED unit assisted detectives, as well as any other division that needed their assistance, including patrol, narcotics, and gangs. Declaration of William Taylor ("Taylor Decl.") ¶17,

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>which are attached to the Declaration of Lawrence A. Michaels as Exhibit C thereto) at page:line 26:22-27:17.</p>	<p>6:12-17; Declaration of Omar Rodriguez ("O. Rodriguez Decl.") ¶23, 6:1-12.</p>
<p>2. Rodriguez was assigned to SED from October 2008 until May 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 28:15-20; Declaration of Janice Lowers ("Lowers Decl."), ¶ 4, 1:15.</p>	<p>Undisputed.</p>
<p>3. In May 2009, the SED unit was disbanded, and Rodriguez was transferred to a Patrol assignment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 26:15-21, 43:19-20; First Amended Complaint ("FAC"), (attached as Exhibit D to the Michaels Decl.), ¶ 66.</p>	<p>Undisputed.</p>
<p>4. The SED assignment did not involve any additional compensation.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 16:4-15; Declaration of Trisha Welsh ("Welsh Decl."), ¶¶ 3-5, 13:10-22; Declaration of Tim Stehr ("Stehr Decl."), ¶ 6, 4:25-:5:2.</p> <p>Note regarding supporting evidence: Rodriguez testified that the base rate of pay in these two assignments was the same, but asserted that more overtime work was available in the SED assignment. However, his payroll and timecard records show that</p>	<p>Disputed. Plaintiff eventually lost overtime pay. Defendant's evidence does not show whether the overtime worked after May 2009 was due to remaining SED work (e.g. court appearances) or patrol work. E. Rodriguez Decl. at ¶41, 8:11-12; O. Rodriguez Decl. ¶24, 6:1-12.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Rodriguez actually worked <i>more</i> overtime and was <i>paid more</i> after he transferred back to a Patrol assignment. The payroll records show that during the portion of 2009 that Rodriguez was assigned to SED, his average weekly overtime hours were 9.75 and his average weekly pay was \$2,546.43. After he was transferred to a Patrol assignment in May 2009, Rodriguez's average weekly overtime hours for the remainder of 2009 were 11.63 and his average weekly pay was \$2,574.81.</p>	
<p>5. The SED assignment did not involve any change in rank.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 6, 4:25-5:2.</p>	<p>Disputed. Special Enforcement Detail ("SED"). Of all of the specialized assignments, e.g., bike patrol, school resources officer, SRT, FTO, gang detail, the Special Enforcement Detail is the most prestigious and most sought after assignment.</p> <p>SED is the oldest specialized detail in the Department – SED has been an active detail for the past thirty years.</p> <p>Among the most important reasons for this detail's prestige are the opportunities: (a) to obtain the necessary skills and knowledge to become a detective and/or promotion in departments other than patrol; (b) for exposure of one's skills and</p>

1 MOVING PARTY'S UNDISPUTED MATERIAL
2 FACTS AND SUPPORTING EVIDENCE

3 OPPOSING PARTY'S RESPONSE
4 AND SUPPORTING EVIDENCE

5 talents to multiple units and divisions
6 within the department; and (c) career-
7 enhancing exposure to and opportunities to
8 participate in various federal, state and
9 county law enforcement task forces
10 sponsored by agencies, such as the DEA,
11 ATF, ICE, FBI, DVM, Postal Inspectors,
12 etc. BPD does not select the officers for
13 assignment to these task forces. The task
14 forces identify and select the officers that
15 they want. Therefore exposure is critical,
16 and this type of exposure is not available if
17 an officer is assigned to patrol. Taylor
18 Decl. 12, 5:6-21; O. Rodriguez Decl., ¶
19 ¶20-31, 5:9-7:13.

20 Issue No. 2: The First Cause of Action for discrimination under the FEHA, as set forth in the
21 FAC, includes and subsumes what is actually a separate cause of action based on Burbank's
22 transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded.
23 On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to
24 judgment as a matter of law for the following reason: Because SED was disbanded, Rodriguez
25 cannot establish that there was a job available for him in SED, which is a necessary element of the
26 prima facie case for discrimination.
27
28

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>6. (Repeat of UF 2, above.) Rodriguez was assigned to SED from October 2008 until May 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 28:15-17; Lowers Decl. ¶ 4, 1:15</p>	Undisputed.
<p>7. (Repeat of UF 3, above.) In May 2009, the SED unit was disbanded, and Rodriguez was transferred to a Patrol assignment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 26:15-21; 43:19-20; FAC ¶ 66.</p>	Undisputed.
<p>8. Sergeant Travis Irving and Officer Steve Karagiosian were also transferred back to Patrol assignments.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 43:11-44:6; Deposition of Steve Karagiosian ("Karagiosian Depo."), (attached as Exhibit E to Michaels Decl.), 19:4-22, 31:7-10.</p>	Disputed. Sergeant Travis Irving returned to his administrative division assignment as Press Information Officer/Chief's Adjutant. S. Karagiosian Decl. at ¶30, 5:25-26.

Issue No. 3: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Rodriguez was assigned to SED by the same person who recommended SED be disbanded, and the legal doctrine of "same actor presumption" precludes Rodriguez from establishing a prima facie case for discrimination.

MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

9. Rodriguez was selected for the SED assignment by the Captain over the SED unit, Janice Lowers.

Supporting Evidence: Rodriguez Depo., 28:15-17; Lowers Decl. ¶ 4, 1:15.

Disputed. Great deference is given to the SED sergeant in selecting SED team members. Taylor Decl. ¶12, 5:9-13; E. Rodriguez Depo., 28:15-17; Deposition testimony excerpts are attached to the Declaration of India S. Thompson ("Thompson Decl."). The aforementioned testimony is found at Thompson Decl., Exhibit "C".

10. The decision to disband the SED unit was made based on the recommendation of Captain Lowers.

Supporting Evidence: Stehr Decl. ¶ 8, 5:7-10; Lowers Decl. ¶ 5, 1:17-22.

Disputed. When Captain Lowers informed Plaintiff and Officer Steve Karagiosian of the decision to disband SED, she expressly told both officers that it was not her decision. See Declaration of Elfego Rodriguez ("E. Rodriguez Decl.") at ¶34, 7:6-10.

Issue No. 4: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for the transfer, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>11. (Repeat of UF 3, above.) In May 2009, the SED unit was disbanded, and Rodriguez was transferred to a Patrol assignment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 26:15-21; 43:19-20; FAC ¶ 66.</p>	Undisputed.
<p>12. The SED unit was already in existence when Chief of Police Stehr assumed the position of Police Chief; he did not create the unit.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b), 5:22-6:3.</p>	Undisputed.
<p>13. (Repeat of UF 10, above.) The decision to disband the SED unit was made based on the recommendation of Captain Lowers.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-10; Lowers Decl. ¶ 5, 1:17-22.</p>	Disputed. When Captain Lowers informed Plaintiff and Officer Steve Karagiosian of the decision to disband SED, she expressly told both officers that it was not her decision. See E. Rodriguez Decl. at ¶34, 7:6-10.
<p>14. Lowers' recommendation was accepted by</p>	Disputed. When Captain Lowers informed

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Chief Stehr, who agreed with Lowers that disbanding the unit was the best way to meet the BPD's needs.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-10.</p>	<p>Plaintiff and Officer Steve Karagiosian of the decision to disband SED, she expressly told both officers that it was not her decision. See E. Rodriguez Decl. at ¶34, 7:6-10.</p>
<p>15. At the time the decision to disband SED was made, the Department was facing budgetary constraints which left it understaffed. These constraints had kept the Department from fully staffing SED, and left it with openings in its Patrol Division as well.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20; Lowers Decl. ¶ 5, 1:17-22.</p>	<p>Disputed. Budgetary constraints were not the reason. In her email to Plaintiff, Captain Lowers stated the reason was the inability to fully staff SED in its present configuration out of investigations. See E. Rodriguez Decl. at ¶35, 7:11-15. See Taylor Decl., at ¶8, 4:12-15; ¶16, 6:10-11; ¶15, 6:5-9 (explaining that Captain Lowers did not mention that SED was disbanded for budgetary reasons; that SED budgetary cuts had occurred prior to Plaintiff being assigned to SED; and that Chief Stehr said he would disband SED because Captain Lowers complained that Plaintiff and Karagiosian acted like "jerks.").</p>
<p>16. Captain Lowers believed, and Chief Stehr agreed, that it was more important to address the needs of the Patrol Division than to provide additional assistance to the detectives, because the Patrol officers are the front-line officers who respond to calls for assistance and provide police presence</p>	<p>Disputed. See E. Rodriguez Decl. at ¶¶36-37, 7:16-26, Exh. B, in which Captain Lowers does not state such is the reason for the disbanding of SED.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>“on the street.”</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20; Lowers Decl. ¶ 5, 1:17-22.</p>	
<p>17. At the time the SED unit was disbanded it was staffed by a Sergeant and two police officers. The two officers were Rodriguez and Steve Karagiosian. The two other positions in SED were vacant.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 28:24-29:13.</p>	<p>Disputed. Captain Janice Lowers was also a member of SED. Lowers Declaration, 1:8-10.</p>
<p>18. Because the SED unit could not be fully staffed (due to the budgetary constraints), Chief Stehr did not believe the unit could function effectively.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20.</p>	<p>Disputed. Budgetary constraints were not the reason. In her email to Plaintiff, Captain Lowers stated the reason was the inability to fully staff SED in its present configuration out of investigations. See E. Rodriguez Decl. at ¶35, 7:11-15 Exh. A. See also Taylor Decl., ¶8, 4:12-15; ¶16, 6:10-11; ¶15, 6:5-9 (explaining that budgetary concerns were not raised at a meeting in which budgetary problems of other units were discussed).</p>
<p>19. Chief Stehr did not believe that a unit that focused on assisting detectives was the best way to use BPD resources.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b), 5:22-6:3.</p>	<p>Disputed. Chief Stehr was simply replacing the SED with an identical unit, the SPU. The inference from the evidence is that SPU was ultimately not created because of fears of how it would look in</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	<p>response to concerns raised such as those in this lawsuit. Declaration of Tim Stehr, 5:22-27. See also Taylor Decl., ¶8, 4:12-15; ¶16, 6:10-11; ¶15, 6:5-9. Further, there was no need to create a new unit that provided assistance to Patrol, in that SED could and did provide assistance to Patrol. E. Rodriguez Decl. ¶36, 7:16-19.</p>
<p>20. Chief Stehr envisioned a unit of uniformed officers (SED officers were plainclothes) within Patrol that would assist the Department with special problems in all areas. Chief Stehr announced his intention to create such a Special Problems Unit at the time he disbanded SED, but the unit has never been created or staffed due to budgetary constraints.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b), 5:22-6:3.</p>	<p>Disputed. Budgetary constraints were not the reason. In her email to Plaintiff, Captain Lowers stated the reason was the inability to fully staff SED in its present configuration out of investigations. See E. Rodriguez Decl. ¶35, 7:11-15, in which Captain Lowers does not state such is the reason for the disbanding of SED.</p>
<p>21. In January 2009, Chief Stehr had removed the Sergeant over SED, Neil Gunn, due to concerns about the number of use of force incidents in which Gunn had been involved.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(c), 6:5-8.</p>	<p>Undisputed.</p>
<p>22. Captain Lowers had counseled Gunn that, as a supervisor, he should try to avoid becoming</p>	<p>Undisputed.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>personally involved in use of force situations.</p> <p><i>Supporting Evidence:</i> Lowers Decl. ¶ 6, 1:24-27.</p>	
<p>23. The Chief and the Captain concluded that Gunn was not following Captain Lowers' instructions in this regard.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(d), 6:10-19; Lowers Decl. ¶ 6, 1:24-27.</p>	Undisputed.
<p>24. Gunn was replaced as Sergeant over SED by Sergeant Travis Irving in January 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 30:5-8; Stehr Decl. ¶ 8(c), 6:5-8.</p>	Undisputed.
<p>25. Irving was also assigned to supervisory duties at the Burbank animal shelter and could not devote his full time to supervising SED.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(c), 6:5-8.</p>	Disputed. Although Irving was assigned to the shelter for a short time, Sgt. Merich quickly replaced Irving at the shelter so that Irving could go back to supervise SED. See O. Rodriguez Decl. ¶36, 7:16-19 (at the animal shelter two to three weeks.)
<p>26. Chief Stehr was concerned about the fact that SED had been supervised by a Sergeant, specifically Sergeant Gunn, whose record on use of force might be subject to scrutiny.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(d), 6:10-19.</p>	Disputed. Sgt. Irving was in charge of SED long before the disband order was given, and Irving had little or no use of force concerns listed as is evidenced by the fact that Sgt. Irving was Chief Stehr's

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	Adjutant prior to his move to SED and currently once again holds such position. See Disputed Fact No. 389.
<p>27. At the time the Chief disbanded the SED unit, he had recently learned of allegations that Lieutenant Omar Rodriguez had used unauthorized force in interrogating a witness and had intimidated another police officer into lying to cover-up his misconduct.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-7:3.</p>	Undisputed.
<p>28. After learning about the allegations, Chief Stehr referred the matter to the Los Angeles County Sheriff's Department for investigation. Chief Stehr had also recently learned that the Federal Bureau of Investigation was conducting its own investigation of use of force by BPD officers.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-7:3.</p>	Undisputed.
<p>29. Chief Stehr was concerned that officers assigned to the SED unit could come under increased scrutiny based on the history of Sergeant Gunn.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-7:3.</p>	Disputed. Both Travis Irving and Plaintiff had little to no history with Sgt. Gunn at SED. See E. Rodriguez Decl., ¶23, 5:10-12. And, at the time SED was disbanded, Sgt. Irving had been in charge of SED for many months. E. Rodriguez Decl. ¶34,

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	7:7-9.
<p>30. Chief Stehr's concern that officers assigned to the SED unit could come under increased scrutiny had nothing to do with any improper use of force by Officer Elfego Rodriguez himself.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-7:3; Rodriguez Depo., 96:22-97:1 (Rodriguez testified that he heard rumors that SED had developed a reputation as having "dirty cops" who "beat suspects," but that the rumors related to conduct that occurred before he was in SED).</p>	<p>Disputed. Both Travis Irving and Plaintiff had little to no history with Sgt. Gunn at SED. E. Rodriguez Decl., ¶23, 5:10-12. And, at the time SED was disbanded, Sgt. Irving had been in charge of SED for many months. E. Rodriguez Decl. ¶34, 7:7-9. Further, Plaintiff testified on page 96, line 22 through page 97, line 1, that he never heard negative comments about SED during his tenure. E. Rodriguez Depo., 96:22-97:1.</p>
<p>31. Rodriguez had not been in the SED when the events giving rise to Chief Stehr's concerns about Sergeant Gunn had taken place.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-7:3.</p>	<p>Disputed. Both Travis Irving and Plaintiff had little to no history with Sgt. Gunn at SED. E. Rodriguez Decl., ¶23, 5:10-12. And, at the time SED was disbanded, Sgt. Irving had been in charge of SED for many months. E. Rodriguez Decl. ¶34, 7:7-9.</p>
<p>32. UF 15 through 31, above, set out the reasons why Chief Stehr accepted Captain Lowers' recommendation to disband SED.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-6:19. Evidence that Rodriguez himself cannot dispute these reasons is his testimony that:</p> <p>(1) He has no basis for thinking that Chief Stehr had any dislike for Hispanic or Guatemalan people</p>	<p>See responses to UF 15 and 31 above and incorporate by reference herein. The reference to Chief Stehr purportedly not having any dislike for Hispanic or Guatemalan people is because Plaintiff is of Guatemalan descent. E. Rodriguez</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>(Rodriguez Depo., 384:11-16);</p> <p>(2) His response in deposition, when asked whether he believed that the closure of SED had anything to do with his ethnicity or national origin: "Not necessarily, per se."</p> <p>"Q Do you believe that the fact that -- I'm sorry. Do you believe that your ethnicity or national origin played any role in the decision to close SED?</p> <p>[Objection omitted.]</p> <p>THE WITNESS: Not necessarily, per se."</p> <p>Rodriguez Depo., 443:16-21.</p> <p>(3) His testimony that his belief that he was retaliated against was just a "feeling" on his part.</p> <p>(Rodriguez Depo., 349:5-19); and</p> <p>(4) His testimony that his belief that the closure of SED was intended to hurt him was speculation on his part:</p> <p>"Q. The chief made the decision to close SED; correct?</p> <p>[Objection omitted.]</p> <p>THE WITNESS: Yes.</p> <p>Q. BY MR. MICHAELS: And in making that decision, he intended to hurt you and Officer Karagiosian, but not the sergeant in charge of that division, Sergeant Irving. That's your opinion; correct?</p> <p>[Objection omitted.]</p> <p>THE WITNESS: Yes.</p> <p>Q. BY MR. MICHAELS: And that is speculation on your part; correct?</p>	<p>Decl. ¶2, 2:2.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
A. Yes.” Rodriguez Depo., 46:21-47:10.	
<p><u>Issue No. 5:</u> The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez first for a position on the Special Response Team (“SRT,” commonly known as the “SWAT” Team). On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's decision not to choose Rodriguez first for the SWAT Team position is not an actionable “adverse employment action,” which is a necessary element of the prima facie case for discrimination.</p>	
MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
33. Rodriguez was assigned to the SWAT Team in February or March 2009. <i>Supporting Evidence:</i> Rodriguez Depo., 143:19-23.	Undisputed.
34. Rodriguez voluntarily left his SWAT Team assignment in late 2009 in order to accept an assignment on the U.S. Marshall's Task Force. <i>Supporting Evidence:</i> Rodriguez Depo., 449:11-23.	Undisputed.
35. The SWAT Team trains one day a month. <i>Supporting Evidence:</i> Rodriguez Depo., 137:15-19.	Disputed. The SWAT Team “is supposed to” train one day a month. Rodriguez Depo., 137:15-19.
36. During the time Rodriguez was on the SWAT Team, he was never actually called out on an	Undisputed.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>assignment. Rodríguez is aware of only one occasion where the SWAT Team was called out during the time he was on the SWAT Team. He missed that assignment because he was out of range to receive the call out on his cell phone.</p> <p><i>Supporting Evidence:</i> Rodríguez Depo., 143:16-17, 159:25-160:23; Declaration of Patrick Lynch ("Lynch Decl.") ¶ 3, 8:11-15.</p>	
<p>37. Members of the SWAT Team receive no extra compensation for the assignment.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 4, 8:17-20.</p>	Undisputed.
<p>38. Members of the SWAT Team receive no change in rank.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 4, 8:17-20.</p>	<p>Disputed. If an officer is ambitious, after he masters patrol responsibilities, he next desires to get out of Patrol and be assigned to a specialized unit like SWAT (SRT). Declaration of Steve Karagiosian, ¶ 14, 4:13-16.</p>

Issue No. 6: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez first for a position on the SWAT Team. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its decision not to choose Rodriguez first for the SWAT Team position, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>39. The SWAT Team is a unit which responds to specific types of emergencies, such as hostage situations and serving high risk search or arrest warrants.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 3, 8:11-15.</p>	Undisputed.
<p>40. Officers wishing to serve on the SWAT Team must have at least two years of service on the BPD and must pass a shooting range test and a physical agility/obstacle course test.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 112:21-25, 113:9-25; Lynch Decl. ¶ 4, 8:17-20.</p>	Undisputed.
<p>41. Three other officers were selected for the SWAT assignment ahead of Rodriguez: Jeff Barcus, Adam Cornils and Steve Turner.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 128:21-129:10.</p>	Undisputed.
<p>42. Officer Barcus had worked as a Deputy</p>	Undisputed.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>County Sheriff before joining the BPD, and had worked on the Sheriff Department's Emergency Response Team.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5(a), 8:27-9:4. Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualifications of Officer Barcus to be on the SWAT Team. Rodriguez Depo., 144:18-20.</p>	
<p>43. Officer Cornils had previously worked for the Monrovia Police Department, and spent four years as a member of their SWAT-type team and of a multi-jurisdictional SWAT-type team serving Monrovia and adjacent jurisdictions.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5(b), 9:6-10. Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualifications of Officer Cornils to be on the SWAT Team. Rodriguez Depo., 144:21-23.</p>	Undisputed.
<p>44. Officer Turner was a former Marine Corps infantryman, fire team leader, and qualified expert marksman, and was trained in close quarters combat tactics.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5(c), 9:12-14. Evidence that Rodriguez himself cannot</p>	Undisputed.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>dispute this fact is his testimony that he has no information about the qualification of Officer Turner to be on the SWAT Team. Rodriguez Depo., 144:24-145:1.</p>	
<p>45. Rodriguez did not have the same training and experience as Barcus, Cornils or Turner.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 6, 9:16-17.</p>	<p>Former Military training is not an appropriate qualification for SWAT. See Declaration of Christopher Dunn ("Dunn Decl.") at ¶4, 2:12-14; ¶5, 2:15-24. Prior experience working on the Sheriff Department's "Emergency Response Team" in the jails (everybody is a part of the Emergency Response Team in the jails) is not an appropriate qualification for SWAT. See Dunn Decl. at ¶6, 2:25-3:4. Therefore, Plaintiff Rodriguez did have the same qualifications as Officers Turner and Barcus.</p>
<p>46. The decision to select Officers Barcus, Cornils, and Turner for the SWAT Team before Rodriguez was made by Captain Pat Lynch.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 7, 9:19-25.</p>	<p>Undisputed.</p>
<p>47. Captain Lynch's decision to select Officers Barcus, Cornils, and Turner for the SWAT Team</p>	<p>Former Military training is not an appropriate qualification for SWAT. See</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>before Rodriguez was based on the qualifications of these officers, including the fact that each of Officers Barcus, Cornils and Turner had past experience and special training which made them particularly well-qualified for SWAT Team duties, and the fact that Barcus, Cornils, and Turner performed better than Rodriguez on the shooting range test and/or the physical agility/obstacle course test.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5, 8:22-9:14 and ¶ 7, 9:19-25.</p> <p>Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualifications of the officers who were selected for the SWAT Team, or why those officers were selected:</p> <p>"Q. BY MR. MICHAELS: What do you know about the qualifications of Officer Barcus to be on the SWAT team?</p> <p>A. Nothing.</p> <p>Q. What do you know about the qualifications of Officer Cornils to be on the SWAT team?</p> <p>A. Nothing.</p> <p>Q. What do you know about the qualifications of Officer Turner to be on the SWAT team?</p> <p>A. Nothing."</p> <p>(Rodriguez Depo., 144:18-145:1)</p> <p>***</p> <p>"BY MR. MICHAELS: What factors were the deciding factors in selecting Officer Barcus over the other officers on the list when he was selected?</p>	<p>Dunn Decl. at ¶4, 2:12-14. Prior experience working on the Sheriff Department's "Emergency Response Team" in the jails (everybody is a part of the Emergency Response Team in the jails) is not an appropriate qualification for SWAT. See Dunn Decl. at ¶6, 2:2-3:4.</p> <p>Therefore, Plaintiff Rodriguez did have the same qualifications as Officers Turner and Barcus.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>[Objection omitted.]</p> <p>THE WITNESS: I don't know.</p> <p>Q. BY MR. MICHAELS: Same question for Officer Cornils.</p> <p>[Objection omitted.]</p> <p>THE WITNESS: I don't know.</p> <p>Q. BY MR. MICHAELS: Same question for Officer Turner.</p> <p>[Objection omitted.]</p> <p>THE WITNESS: I don't know."</p> <p>(Rodriguez Depo., 147:7-22.)</p> <p>Rodriguez also testified that his belief that he was retaliated against was just a "feeling" on his part.</p> <p>Rodriguez Depo., 349:5-19.</p>	
<p>48. When Rodriguez was selected for the SWAT Team, he was selected ahead of other applicants who were white.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 8, 10:1-2.</p>	<p>Undisputed.</p>
<p><u>Issue No. 7:</u> The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez for a temporary assignment to train another officer (the "temporary training assignment"). On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's decision not to select Rodriguez for the temporary training assignment is</p>	

not an actionable "adverse employment action," which is a necessary element of the prima facie case for discrimination.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
49. Rodriguez was not chosen to fill in as a temporary training officer for a one-week period while the regular training officer was on vacation during the period from June 27 through July 4, 2009. <i>Supporting Evidence:</i> Rodriguez Depo., 19:13-20:5; Declaration of Eric Rosoff ("Rosoff Decl.") ¶ 3, 11:7-13.	Disputed. Plaintiff Rodriguez was not chosen as an FTO, and Officers who were unqualified and had much less experience where chosen in his place. E. Rodriguez Decl., ¶42, 8:13-20; O. Rodriguez Decl. ¶¶18-19, 4:24-5:5.
50. The temporary training assignment (which lasted for one week) did not involve any additional compensation. <i>Supporting Evidence:</i> Rodriguez Depo., 21:5-15.	Undisputed.
51. The temporary training assignment (which lasted for one week) did not involve any change in rank. <i>Supporting Evidence:</i> Stehr Decl. ¶ 7, 5:4-5.	Undisputed.
52. Rodriguez had served as a Field Training Officer from January 2007 until to October 2008. <i>Supporting Evidence:</i> FAC ¶ 60; Stehr Decl. ¶ 6, 4:25-5:2.	Undisputed.

Issue No. 8: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez for a temporary training assignment. On said cause of action,

there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its decision not to select Rodriguez for the temporary training assignment, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>53. (Repeat of UF 49, above.) Rodriguez was not chosen to fill in as a temporary training officer for a one-week period while the regular training officer was on vacation during the period from June 27 through July 4, 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 19:13-20:5; Rosoff Decl. ¶ 3, 11:7-13.</p>	<p>Disputed. Plaintiff Rodriguez was not chosen as an FTO, and Officers who were unqualified and had much less experience were chosen in his place. E. Rodriguez Decl., ¶42, 8:13-20; O. Rodriguez Decl. ¶¶18-19, 4:24-5:5.</p>
<p>54. The officers assigned to fill in as temporary training officers during this week were Officers Krueger and Edwards.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 23:1-13; Rosoff Decl. ¶ 3, 11:7-13.</p>	<p>Undisputed.</p>
<p>55. Officers Kruger and Edwards were selected by the Watch Commander, Lieutenant Eric Rosoff, based on the fact that they were good officers who had been working continuously in Patrol for at least a year and who had expressed an interest in becoming regular Field Training Officers; Rosoff wanted to assist them in their career development by giving them an opportunity to act as Field Training Officers.</p>	<p>Given the required FTO training and minimum BPD experience requirements, the proffered reason given for assigning two patently unqualified officers for the assignment is pretext. See E. Rodriguez Decl., ¶42, 8:13-20; O. Rodriguez Decl., ¶¶18-19, 4:24-5:7.</p>

**MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

Supporting Evidence: Rosoff Decl. ¶ 4, 8:12-16.

56. (Repeat of UF 52, above.) Rodriguez had served as a Field Training Officer from January 2007 until October 2008.

Supporting Evidence: FAC ¶ 60; Stehr Decl. ¶ 6, 4:25-5:2.

Undisputed.

Issue No. 9: Burbank is entitled to summary adjudication as to the entire First Cause of Action for discrimination in violation of the FEHA, as set forth in the FAC, because Burbank is entitled to summary adjudication as to each of the claims included and subsumed therein, for the reasons stated in Issues 1 through 8, *infra*.

**MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

57. Rodriguez identifies the three decisions described above (that is, his transfer from an SED assignment to an assignment in Patrol, the fact that he was not the first officer selected for a position on the SWAT Team, and Burbank's failure to choose him for a temporary assignment training another officer) as the only three reasons he was dissatisfied with his employment.

Supporting Evidence: Rodriguez Depo., 26:1-14.

Disputed. Rodriguez also identifies that he was assigned to the worst possible Patrol shift (the worst job in the Department) following the disbanding of SED. Rodriguez Depo., 201:15-202:16; 206:4-8; Deposition of Steve Karagiosian (attached to Thompson Decl. as Exh. "E"), 19:21-25; E. Rodriguez Decl. ¶40, 8: 8-10. Other reasons Plaintiff testified that he was "dissatisfied" included the hostile work environment which he complained about

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	to Lt. Dermenjian in April 2009, just over a month prior to disbanding SED. See Disputed Facts No. 382 supra. This included the use of racially and ethnically derogatory language at the Burbank Police Department both in Plaintiffs presence, and outside of Plaintiff's presence. See Disputed Fact Nos. 406 -525.
58. Rodriguez is currently employed by the BPD. <i>Supporting Evidence:</i> Lowers Decl. ¶ 3, 1:12-13; FAC ¶ 4.	Disputed. Plaintiff was placed on administrative leave on March 30, 2010, with a recommendation for termination. E. Rodriguez Decl., ¶43, 8:22-25. E. Rodriguez Decl., Exh. E.
59. Rodriguez has not been disciplined during his employment with the BPD. <i>Supporting Evidence:</i> Rodriguez Depo., 442:22-23.	Disputed. Plaintiff has been investigated and is now on administrative leave with recommendation to terminate E. Rodriguez. E. Rodriguez Decl., ¶¶ 43-44, 8:22-28.
60. Rodriguez has not been denied a promotion during his employment with the BPD. <i>Supporting Evidence:</i> Rodriguez Depo., 17:15-20.	Disputed. Plaintiff's promotion to SRT ("SWAT") was delayed twice, once in 2007 and again in 2008 in favor of lesser qualified Caucasians. See E. Rodriguez Decl., ¶19, 4:23-25. Plaintiff received a

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	demotion when SED was dismantled, and he was moved back to Patrol. See E. Rodriguez Decl., ¶¶37-42, 7:2-8:20; E. Rodriguez Depo., 139:11-140:9.
<p>61. Each of the performance evaluations Rodriguez has been given during his employment with the BPD reflected the fact that he had been performing his job in an above-satisfactory or better manner.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 333:18-25.</p>	Undisputed.
<p>62. Rodriguez sought four special assignments and got all of them: Field Training Officer, Special Enforcement Detail, Special Response (or SWAT) Team, and U.S. Marshall's Task Force.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 18:24-19:2, 25:4-16, 28:15-17, 143:16-23, 449:9-20.</p>	Disputed. Plaintiff's promotion to SRT ("SWAT") was delayed twice, once in 2007 and again in 2008 in favor of lesser qualified Caucasians. See E. Rodriguez Decl., ¶19, 4:23-25. Plaintiff received a demotion when SED was dismantled, and he was moved back to Patrol. See E. Rodriguez Decl., ¶¶37-42, 7:2-8:20; E. Rodriguez Depo., 139:11-140:9.
<p>63. Rodriguez does not know of any white officer in the BPD who has a better track record than Rodriguez himself in getting every assignment and duty they requested.</p>	Undisputed.

**MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

Supporting Evidence: Rodriguez Depo.,
472:13-18.

64. Burbank incorporates by reference
Undisputed Material Fact Nos. 1 through 56 above.

Plaintiff incorporates by reference his
responses to Facts Nos. 1 through 56 here.

SECOND CAUSE OF ACTION

(Harassment under the FEHA)

Issue No. 10: There is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law on the Second Cause of Action for harassment in violation of the FEHA because Rodriguez was not subjected to severe or pervasive harassment.

**MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

65. The Department received an anonymous
letter complaining about racial and ethnic remarks
made by unnamed BPD officers.

Supporting Evidence: Rodriguez Depo.,
234:16-20; Stehr Decl. ¶ 3, 4:12-15.

Disputed. The anonymous letter also
complained about the hostile work
environment at BPD. See E. Rodriguez
Depo., at 234:16-20.

66. Rodriguez did not send the anonymous letter,
and he does not know who did.

Supporting Evidence: Rodriguez Depo.,
235:3-5.

Undisputed.

67. An outside attorney/investigator, Irma
Rodriguez Moisa, was hired by BPD to conduct an
independent investigation in to the allegations
contained in the anonymous letter.

Disputed. Plaintiff contests and disputes
the "independent" nature of the
investigation, in that the BPD has refused

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Supporting Evidence: Rodriguez Depo., 238:1-8; Stehr Decl. ¶ 3, 4:12-15.</p>	<p>to produce the report authored by Moisa in connection with her investigation. See Declaration of India S. Thompson at ¶17, 3:13-17.</p>
<p>68. Moisa interviewed more than a dozen officers in Spring 2008.</p> <p>Supporting Evidence: Rodriguez Depo., 345:20-346:7; Stehr Decl. ¶ 4, 4:17-19.</p>	<p>Undisputed.</p>
<p>69. Rodriguez was one of the officers interviewed by Moisa.</p> <p>Supporting Evidence: Rodriguez Depo., 238:9-10.</p>	<p>Undisputed.</p>
<p>70. Rodriguez did not seek out Moisa to make any report or complaint. Moisa contacted him for an interview.</p> <p>Supporting Evidence: Rodriguez Depo., 349:24-350:11.</p> <p>"Q: But it was not a case of you voluntarily initiating a contact with her to make a complaint. You responded to a request to be interviewed; correct?"</p> <p>A: Yes."</p>	<p>Undisputed.</p>
<p>71. When he was interviewed by Moisa, Rodriguez told her that he had heard some derogatory comments made about Hispanics years before, when he was a probationary officer, but that since he had become a more experienced officer nobody would make a comment like that in his</p>	<p>Disputed. Plaintiff Rodriguez specifically stated that Officer Kendricks said: "Mexican's messed up Burbank." E, Rodriguez Depo., 240:3-8.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>presence.</p> <p><i>Supporting Evidence:</i></p> <p>"Q. Other -- strike that. You -- do you recall telling Irma Rodriguez that when you were a new officer -- a young officer in the department, still on probation, or shortly thereafter, that you had heard derogatory remarks, but you couldn't recall exactly what they were, made about Hispanics?</p> <p>A. Yes.</p> <p>Q. Do you recall telling Irma Rodriguez that since you had become a more experienced officer, that people knew you had a strong personality and that now nobody would make a statement like that, negative about Hispanics, in your presence?</p> <p>A. Something to that effect."</p> <p>(Rodriguez Depo., 242:6-18.)</p> <p>***</p> <p>"Q. Okay. Did any of these remarks get said after you were on probation in your presence?</p> <p>[Objection omitted.]</p> <p>Q. BY MR. MICHAELS: After the time that you successfully completed your probation.</p> <p>A. Most of these comments I heard were earlier in my career, right around that time, my first year don't know specifically if some bridged that line after -- after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."</p> <p>(Rodriguez Depo., 248:5-16.)</p>	<p>Not all of the derogatory comments recalled by Plaintiff were made in the first year or so of his career; most of the comments were, but some were heard through the time he complained to Lt. Dermenjian. E. Rodriguez Depo., 201:10-206:4-8. E. Rodriguez Decl., ¶¶21-22, 5:2-9.</p>
<p>72. Rodriguez told Moisa he heard Hispanics referred to as "paisas" (Spanish slang for countryman or "paisano"), "12500's" (reference to the Vehicle Code Section prohibiting driving without a licenses), "those people" or "your peeps," and</p>	<p>Undisputed.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1 "Mojados." Rodriguez also told Moisa he had heard</p> <p>2 comments about Armenians.</p> <p>3</p> <p>4 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>5 241:9-12, 243:5-244:24, 244:25-245:12, 245:18-</p> <p>6 246:5, 246:6-246:9.</p>	
<p>7 73. Rodriguez began working for the BPD in</p> <p>8 2004.</p> <p>9 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>10 126:24 – 127:1.</p>	Undisputed.
<p>11 74. Rodriguez identified only two individuals</p> <p>12 who made any of these remarks: Officers Aaron</p> <p>13 Kendrick and Jared Cutler.</p> <p>14 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>15 240:3-8, 241:9-12, 244:18-22, 244:25-245:12, 246:6-</p> <p>16 12, 406:5-13, 406:14-20.</p> <p>17 "Q. Do you recall anyone specifically who made</p> <p>18 those remarks?</p> <p>19 A. I've heard Kendrick refer to them as 'your</p> <p>20 peeps' several times.</p> <p>21 Q. Anyone else?</p> <p>22 A. Cutler.</p> <p>23 Q. Anyone else?</p> <p>24 A. Not specifically."</p> <p>25 Rodriguez Depo., 245:23-246:5.</p>	<p>Disputed. Plaintiff Rodriguez testified that</p> <p>"numerous officers" made other race-</p> <p>based remarks, though at that time of his</p> <p>deposition, Plaintiff did not specifically</p> <p>recall any names other than Officers Cutler</p> <p>and Kendrick. See E. Rodriguez Depo.,</p> <p>240:11-19.</p>
<p>26 75. Officer Kendrick was disciplined as a result</p> <p>27 of Moisa's investigation and a follow-up internal</p> <p>28 investigation.</p>	<p>Disputed. Statement is not supported by</p> <p>evidence. At page 248, lines 17-23 of</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Supporting Evidence: Rodriguez Depo., 248:17-23; Stehr Decl. ¶ 5, 4:21-23.</p>	<p>Plaintiff's deposition, Plaintiff indicated that he did not know whether Kendrick was disciplined and that there were "rumors both ways." See E. Rodriguez Depo., 248:24-249:12.</p>
<p>76. Officer Cutler left the Department before any discipline resulting from Moisa's investigation could be considered.</p> <p>Supporting Evidence: Rodriguez Depo., 248:24-249:12; Stehr Decl. ¶ 5, 4:21-23.</p>	<p>Disputed. Statement is not supported by evidence. At page 248, lines 17-23 of Plaintiff's deposition, Plaintiff indicated that he did not know whether Kendrick was disciplined and that there were "rumors both ways." See E. Rodriguez Depo., 248:24-249:12.</p>
<p>77. Rodriguez's report to Moisa was accurate and complete.</p> <p>Supporting Evidence:</p> <p>"Q. So you told the truth, the whole truth, and nothing but the truth to Irma Moisa Rodriguez –</p> <p>A. As I remember it, yes."</p> <p>(Rodriguez Depo., 238:11-239:5.)</p>	<p>Disputed. The purported fact is a mischaracterization of the evidence. As set forth in the adjacent, Plaintiff Rodriguez recalled telling the investigator the truth, but the evidence does not support an inference that Plaintiff told the investigator <u>everything</u> that happened to him. Therefore, the evidence does not support the statement that Plaintiff's report was "complete." See E. Rodriguez Depo., 238:11-239:5.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>78. Rodriguez reaffirmed in his deposition testimony what he had told Moisa: that all of the derogatory comments he could recall were made during the first year or so of his career.</p> <p><i>Supporting Evidence:</i></p> <p>"Q. Okay. Did any of these remarks get said after you were on probation in your presence?"</p> <p>MR. GRESEN: Objection. Vague and ambiguous as to "after you were on probation."</p> <p>Q. BY MR. MICHAELS: After the time that you successfully completed your probation.</p> <p>A. Most of these comments I heard were earlier in my career, right around that time, my first year on. I don't know specifically if some bridged that line after -- after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."</p> <p>(Rodriguez Depo., 248:5-16.)</p>	<p>Disputed. Mischaracterization of the evidence. Plaintiff Rodriguez stated in his deposition that most <u>not all</u> of the derogatory comments he recalled were made during the first year or so of his career. In fact, the specific language is cited in the adjacent box. See E. Rodriguez Depo., 248:5-16.</p>
<p>79. Rodriguez initially testified that his report to Moisa included all of the derogatory terms he could recall hearing about Hispanics.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 246:13-247:10.</p>	<p>Disputed. Mischaracterization of the evidence. Plaintiff Rodriguez does not mention the investigator in his deposition. See E. Rodriguez Depo., 246:13-247:10. The transcript does not support the statement made in undisputed fact number 79.</p>
<p>80. Rodriguez later testified to hearing the additional terms "gardeners," "Julios," "half breed," and "wetback."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo.,</p>	<p>Undisputed.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-429:21.	
<p>81. Rodriguez is unable to remember who made any of the comment identified in UF 80, or when these terms were used, or the context in which they were used.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-429:21.</p>	<p>Disputed. Plaintiff Rodriguez remembers the context in which the derogatory terms were used and, therefore, the time frame may be established by his work history.</p> <p>For example, Plaintiff refers to the term "wetback" referred to Hispanics.</p> <p>E. Rodriguez Depo., 429:10. Plaintiff Rodriguez refers to the term "Julios" being used in connection with a Hispanic burglary in which the suspects were referred to as "Julios." E. Rodriguez Depo., 425:17-22. Plaintiff Rodriguez also refers to "gardeners" being used to refer to Hispanics. E. Rodriguez Depo., 423:6-424:4.</p>
<p>82. Sergeant Kelly Frank made the following remark to Rodriguez during Rodriguez's first year to eighteen months in the BPD: "You look like the bad guys we chase."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 310:13-310:23.</p>	<p>Disputed. In his Declaration, Kelly Frank was unsure when the remark was made, stating that it could have been anytime within the last three years. Frank Declaration, ¶3, 11:8-11.</p>
83. In making this comment, Frank was referring	Disputed. Frank admits making the

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>to the mid-1960's Chevrolet Rodriguez drove, which Frank felt looked like the type of car the Burbank Police Department often sees driven by street racers. Frank did not make this comment for any reason related to Rodriguez's ethnicity or national origin.</p> <p><i>Supporting Evidence:</i> Declaration of Kelly Frank ("Frank Decl."), ¶¶ 3, 12:8-13 and 5, 12:17-20.</p>	<p>statement that "<u>you</u>" look like the bad guys we chase. DF #82. Frank did not say "<u>your car</u>" looks like the bad guys we chase. Further, Detective Frank said these words when Plaintiff Rodriguez was outside of his car and he referred directly to Plaintiff Rodriguez. As a result, a trier of fact could find that Detective Frank was not referring to the car and was, in fact, referring to Elfego Rodriguez. See also E. Rodriguez Decl., ¶¶6-7, 2:19-3:2.</p>
<p>84. Rodriguez never asked Frank what he had meant by this comment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 314:10-12.</p>	<p>Undisputed.</p>
<p>85. In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were taken from what a witness had said during an interview.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 202:11-21, 289:13-20, 204:18-205:6, and Exhibit 146 to Rodriguez Depo.</p>	<p>Disputed. This is not supported by the evidence. When Plaintiffs Rodriguez and Karagiosian viewed the white board, they were informed that the comments were made in connection with an investigation into a particular case involving Armenians. Karagiosian Declaration, p. 3, line 7 to p. 4 line 14; Deposition of Steve Karagiosian</p>

MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

("Karagiosian Depo."), attached to Thompson Decl. as Exhibit "E", 48:15-50:12. Both Plaintiff Karagiosian and Plaintiff Elfego Rodriguez were offended by the comments, and the explanation given to them. E. Rodriguez Depo., 289:13-20; Karagiosian Depo., 48:15-50:12. Plaintiffs Karagiosian and Rodriguez then complained to Lt. Dermenjian, who told them that if they made a complaint about this, it would be detrimental to their careers and held against them. Karagiosian Decl., 3:18-4:4; Karagiosian Depo., 48:15-50:12; E. Rodriguez Decl., ¶32, 6:26-28.

86. The phrases on the dry erase board were as follows:

"My friend...100 percent."

"I tell you everything...100 percent."

"Sir, please, I beg you."

"Swear to God not 100 percent but 1000 percent."

"Burbank police: Sir, what happened? Tell me.

What do you know? Well what do you know?."

Supporting Evidence: Rodriguez Depo.,

Undisputed.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
294:16-295:15 and Exhibit 146 to Rodriguez Depo.	
<p>87. Rodriguez considered these phrases to be referring to Armenians because of the use of the phrase "100 percent."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 289:21-290:24.</p>	<p>Disputed. Mischaracterization of the evidence. Plaintiff Rodriguez also considered the use of the term "my friend," especially when paired with "100 percent."</p> <p>E. Rodriguez Depo., 289:21-290:24.</p>
<p>88. Rodriguez considered the use of this phrase "100 percent" disrespectful or demeaning to Armenians.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 290:22-292:11.</p>	<p>Undisputed.</p>
<p>89. Rodriguez has heard Armenians (including Armenian officers in the BPD) use the words "100 percent."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 290:22-292:25.</p>	<p>Disputed. Mischaracterization of the evidence. Plaintiff Rodriguez heard Armenians use the words "100 percent," however, in a different context. E. Rodriguez Depo., 290:22-292:25.</p>
<p>90. Rodriguez's co-plaintiff Steve Karagiosian (who is Armenian) also observed the quotations written on the dry erase board and discussed the quotations with Lieutenant Armen Dermenjian in Rodriguez's presence.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 209:1-24; FAC ¶ 3.</p>	<p>Disputed. Mischaracterization of the evidence. Plaintiff Rodriguez and Plaintiff Karagiosian complained to Lieutenant Dermenjian. E. Rodriguez Depo., 209:1-24; Karagiosian Depo., 209:1-24.</p>
<p>91. During that conversation, Rodriguez told Dermenjian that he also felt the comments on the</p>	<p>Disputed. Plaintiff Rodriguez stated that he was offended by the statements made</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>board were "inappropriate." Rodriguez does not recall saying anything else on the subject. Rodriguez did not make any other report of the incident because Karagiosian already had.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 214:16-23, 215:6-17.</p>	<p>on the white board. E. Rodriguez Depo., 289:13-20.</p>
<p>92. Rodriguez testified that the only people he believed deserved discipline for any harassing, discriminatory or retaliatory conduct were Kendrick, Cutler, Frank, and whoever wrote the remarks on the dry erase board.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 282:18-284:11.</p>	<p>Undisputed.</p>
<p>93. Rodriguez discussed some of the comments he heard with his co-plaintiff Omar Rodriguez but he ceased having any such conversations in early 2008 because, in his words, "my career had moved on and I had kind of gotten away from Officer Cutler and Officer Kendrick, and I was just kind of away on my own."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 314:13-315:22, 357:5-19.</p>	<p>Undisputed.</p>
<p>94. Rodriguez did not discuss these matters with Omar Rodriguez for the purpose of reporting them. He did not want them reported. Instead, he told Omar Rodriguez about the comments because he</p>	<p>Disputed. Misstates the evidence. Plaintiff did not "report" it because he feared that he might be "fired or disciplined"; rather he was "upset and</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>trusted Omar Rodriguez not to repeat them to anyone else.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 376:5-11.</p>	<p>relaying that" to Lt. Omar Rodriguez. See Rodriguez Depo., 314:13-315:24.</p>

Issue No. 11: There is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law on the Second Cause of Action for harassment in violation of the FEHA because Rodriguez's harassment claims are time-barred under California Government Code Section 12960(d).

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>95. Rodriguez filed his DFEH complaint on May 27, 2009. FAC ¶ 67, Exhibit G thereto.</p>	<p>Undisputed.</p>
<p>96. (Repeat of UF 65, above.) The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15.</p>	<p>Disputed. The anonymous letter also complained about the hostile work environment at BPD. See E. Rodriguez Depo., at 234:16-20.</p>
<p>97. (Repeat of UF 66, above.) Rodriguez did not send the anonymous letter, and he does not know who did.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 235:3-5.</p>	<p>Undisputed.</p>
<p>98. (Repeat of UF 67, above.) An outside attorney/investigator, Irma Rodriguez Moisa, was hired by BPD to conduct an independent</p>	<p>Disputed. Plaintiff contests and disputes the "independent" nature of the investigation, in that the BPD has refused</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>investigation in to the allegations contained in the anonymous letter.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 238:1-8; Stehr Decl. ¶ 3, 4:12-15.</p>	<p>to produce the report authored by Moisa in connection with her investigation. See Declaration of India S. Thompson at ¶17, 3:13-17.</p>
<p>99. (Repeat of UF 68, above.) Moisa interviewed more than a dozen officers in Spring 2008.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 345:20-346:7; Stehr Decl. ¶ 4, 4:17-19.</p>	<p>Undisputed.</p>
<p>100. (Repeat of UF 69, above.) Rodriguez was one of the officers interviewed by Moisa.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 238:9-10.</p>	<p>Undisputed.</p>
<p>101. (Repeat of UF 70, above.) Rodriguez did not seek out Moisa to make any report or complaint. Moisa contacted him for an interview.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 349:24-350:11.</p> <p>"Q: But it was not a case of you voluntarily initiating a contact with her to make a complaint. You responded to a request to be interviewed; correct?"</p> <p>A: Yes."</p>	<p>Undisputed.</p>
<p>102. (Repeat of UF 71, above.) When he was interviewed by Moisa, Rodriguez told her that he had heard some derogatory comments made about Hispanics years before, when he was a probationary officer, but that since he had become a more</p>	<p>Disputed. Plaintiff Rodriguez specifically stated that Officer Kendricks said: "Mexican's messed up Burbank." E, Rodriguez Depo., 240:3-8.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>experienced officer nobody would make a comment like that in his presence.</p> <p><i>Supporting Evidence:</i></p> <p>"Q. Other -- strike that. You -- do you recall telling Irma Rodriguez that when you were a new officer -- a young officer in the department, still on probation, or shortly thereafter, that you had heard derogatory remarks, but you couldn't recall exactly what they were, made about Hispanics?</p> <p>A. Yes.</p> <p>Q. Do you recall telling Irma Rodriguez that since you had become a more experienced officer, that people knew you had a strong personality and that now nobody would make a statement like that, negative about Hispanics, in your presence?</p> <p>A. Something to that effect."</p> <p>(Rodriguez Depo., 242:6-18.)</p> <p>***</p> <p>"Q. Okay. Did any of these remarks get said after you were on probation in your presence?</p> <p>[Objection omitted.]</p> <p>Q. BY MR. MICHAELS: After the time that you successfully completed your probation.</p> <p>A. Most of these comments I heard were earlier in my career, right around that time, my first year don't know specifically if some bridged that line after -- after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."</p> <p>(Rodriguez Depo., 248:5-16.)</p>	<p>Not all of the derogatory comments recalled by Plaintiff were made in the first year or so of his career; most of the comments were, but some were heard through the time he complained to Lt. Dermenjian. E. Rodriguez Depo., 201:10-206:4-8. E. Rodriguez Decl., ¶¶21-22, 5:2-9.</p>
<p>103. (Repeat of UF 72, above.) Rodriguez told Moisa he heard Hispanics referred to as "paisas" (Spanish slang for countryman or "paisano"), "12500's" (reference to the Vehicle Code Section</p>	<p>Undisputed.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>prohibiting driving without a licenses), "those people" or "your peeps," and "Mojados." Rodriguez also told Moisa he had heard comments about Armenians.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 241:9-12, 243:5-244:24, 244:25-245:12, 245:18-246:5, 246:6-246:9.</p>	
<p>104. (Repeat of UF 73, above.) Rodriguez began working for the BPD in 2004.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 126:24 – 127:1.</p>	Undisputed.
<p>105. (Repeat of UF 74, above.) Rodriguez identified only two individuals who made any of these remarks: Officers Aaron Kendrick and Jared Cutler.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 240:3-8, 241:9-12, 244:18-22, 244:25-245:12, 246:6-12, 406:5-13, 406:14-20.</p> <p>"Q. Do you recall anyone specifically who made those remarks?</p> <p>A. I've heard Kendrick refer to them as 'your peeps' several times.</p> <p>Q. Anyone else?</p> <p>A. Cutler.</p> <p>Q. Anyone else?</p> <p>A. Not specifically."</p> <p>Rodriguez Depo., 245:23-246:5.</p>	<p>Disputed. Plaintiff Rodriguez testified that "numerous officers" made other race-based remarks, though at that time of his deposition, Plaintiff did not specifically recall any names other than Officers Cutler and Kendrick. See E. Rodriguez Depo., 240:11-19.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>106. (Repeat of UF 75, above.) Officer Kendrick was disciplined as a result of Moisa's investigation and a follow-up internal investigation.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 248:17-23; Stehr Decl. ¶ 5, 4:21-23.</p>	<p>Disputed. Statement is not supported by evidence. At page 248, lines 17-23 of Plaintiff's deposition, Plaintiff indicated that he did not know whether Kendrick was disciplined and that there were "rumors both ways." See E. Rodriguez Depo., 248:24-249:12.</p>
<p>107. (Repeat of UF 76, above.) Officer Cutler left the Department before any discipline resulting from Moisa's investigation could be considered.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 248:24-249:12; Stehr Decl. ¶ 5, 4:21-23.</p>	<p>Disputed. Statement is not supported by evidence. At page 248, lines 17-23 of Plaintiff's deposition, Plaintiff indicated that he did not know whether Kendrick was disciplined and that there were "rumors both ways." See E. Rodriguez Depo., 248:24-249:12.</p>
<p>108. (Repeat of UF 77, above.) Rodriguez's report to Moisa was accurate and complete.</p> <p><i>Supporting Evidence:</i></p> <p>"Q. So you told the truth, the whole truth, and nothing but the truth to Irma Moisa Rodriguez –</p> <p>A. As I remember it, yes."</p> <p>(Rodriguez Depo., 238:11-239:5.)</p>	<p>Disputed. The purported fact is a mischaracterization of the evidence. As set forth in the adjacent, Plaintiff Rodriguez recalled telling the investigator the truth, but the evidence does not support an inference that Plaintiff told the investigator <u>everything</u> that happened to him. Therefore, the evidence does not support the statement that Plaintiff's report</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	was "complete." See E. Rodriguez Depo., 238:11-239:5.
<p>109. (Repeat of UF 78, above.) Rodriguez reaffirmed in his deposition testimony what he had told Moisa: that all of the derogatory comments he could recall were made during the first year or so of his career.</p> <p><i>Supporting Evidence:</i></p> <p>"Q. Okay. Did any of these remarks get said after you were on probation in your presence?</p> <p>MR. GRESSEN: Objection. Vague and ambiguous as to "after you were on probation."</p> <p>Q. BY MR. MICHAELS: After the time that you successfully completed your probation.</p> <p>A. Most of these comments I heard were earlier in my career, right around that time, my first year on. I don't know specifically if some bridged that line after -- after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."</p> <p>(Rodriguez Depo., 248:5-16.)</p>	Repeat of DF 78, above.
<p>110. (Repeat of UF 79, above.) Rodriguez initially testified that his report to Moisa included all of the derogatory terms he could recall hearing about Hispanics.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 246:13-247:10.</p>	Repeat of DF 79, above.
<p>111. (Repeat of UF 80, above.) Rodriguez later testified to hearing the additional terms "gardeners," "Julios," "half breed," and "wetback."</p>	Repeat of DF 80, above

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Supporting Evidence: Rodriguez Depo., 420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-429:21.</p>	
<p>112. (Repeat of UF 81, above.) Rodriguez is unable to remember who made any of the comment identified in UF 80, or when these terms were used, or the context in which they were used.</p> <p>Supporting Evidence: Rodriguez Depo., 420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-429:21.</p>	Repeat of DF 81, above.
<p>113. (Repeat of UF 82, above.) Sergeant Kelly Frank made the following remark to Rodriguez during Rodriguez's first year to eighteen months in the BPD: "You look like the bad guys we chase."</p> <p>Supporting Evidence: Rodriguez Depo., 310:13-310:23.</p>	Repeat of DF 82, above
<p>114. (Repeat of UF 83, above.) In making this comment, Frank was referring to the mid-1960's Chevrolet Rodriguez drove, which Frank felt looked like the type of car the Burbank Police Department often sees driven by street racers. Frank did not make this comment for any reason related to Rodriguez's ethnicity or national origin.</p> <p>Supporting Evidence: Declaration of Kelly Frank ("Frank Decl."), ¶¶ 3, 12:8-13 and 5, 12:17-20.</p>	Repeat of DF 83, above.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>115. (Repeat of UF 84, above.) Rodriguez never asked Frank what he had meant by this comment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 314:10-12.</p>	<p>Repeat of DF 84, above</p>
<p>116. (Repeat of UF 85, above.) In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were taken from what a witness had said during an interview.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 202:11-21, 289:13-20, 204:18-205:6, and Exhibit 146 to Rodriguez Depo.</p>	<p>Repeat of DF 85, above</p>
<p>117. (Repeat of UF 86, above.) The phrases on the dry erase board were as follows:</p> <p>"My friend...100 percent."</p> <p>"I tell you everything...100 percent."</p> <p>"Sir, please, I beg you."</p> <p>"Swear to God not 100 percent but 1000 percent."</p> <p>"Burbank police: Sir, what happened? Tell me. What do you know? Well what do you know?"</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 294:16-295:15 and Exhibit 146 to Rodriguez Depo.</p>	<p>Repeat of DF 86, above.</p>
<p>118. (Repeat of UF 87, above.) Rodriguez considered these phrases to be referring to Armenians because of the use of the phrase "100 percent."</p>	<p>Repeat of DF 87, above.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Supporting Evidence: Rodriguez Depo., 289:21-290:24.</p>	
<p>119. (Repeat of UF 88, above.) Rodriguez considered the use of this phrase "100 percent" disrespectful or demeaning to Armenians.</p> <p>Supporting Evidence: Rodriguez Depo., 290:22-292:11.</p>	<p>Repeat of DF 88, above.</p>
<p>120. (Repeat of UF 89, above.) Rodriguez has heard Armenians (including Armenian officers in the BPD) use the words "100 percent."</p> <p>Supporting Evidence: Rodriguez Depo., 290:22-292:25.</p>	<p>Repeat of DF 89, above</p>
<p>121. (Repeat of UF 90, above.) Rodriguez's co-plaintiff Steve Karagiosian (who is Armenian) also observed the quotations written on the dry erase board and discussed the quotations with Lieutenant Armen Dermenjian in Rodriguez's presence.</p> <p>Supporting Evidence: Rodriguez Depo., 209:1-24; FAC ¶ 3.</p>	<p>Repeat of DF 90, above</p>
<p>122. (Repeat of UF 91, above.) During that conversation, Rodriguez told Dermenjian that he also felt the comments on the board were "inappropriate." Rodriguez does not recall saying anything else on the subject. Rodriguez did not make any other report of the incident because Karagiosian already had.</p> <p>Supporting Evidence: Rodriguez Depo.,</p>	<p>Repeat of DF 91, above.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
214:16-23, 215:6-17.	
<p>123. (Repeat of UF 92, above.) Rodriguez testified that the only people he believed deserved discipline for any harassing, discriminatory or retaliatory conduct were Kendrick, Cutler, Frank, and whoever wrote the remarks on the dry erase board.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 282:18-284:11.</p>	Repeat of DF 92, above.
<p>124. (Repeat of UF 93, above.) Rodriguez discussed some of the comments he heard with his co-plaintiff Omar Rodriguez but he ceased having any such conversations in early 2008 because, in his words, "my career had moved on and I had kind of gotten away from Officer Cutler and Officer Kendrick, and I was just kind of away on my own."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 314:13-315:22, 357:5-19.</p>	Repeat of DF 93, above.
<p>125. (Repeat of UF 94, above.) Rodriguez did not discuss these matters with Omar Rodriguez for the purpose of reporting them. He did not want them reported. Instead, he told Omar Rodriguez about the comments because he trusted Omar Rodriguez not to repeat them to anyone else.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 376:5-11.</p>	Repeat of DF 94, above.

THIRD CAUSE OF ACTION

(Retaliation under the FEHA)

Issue No. 12: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, the transfer from SED to Patrol is not an actionable "adverse employment action," which is a necessary element of the prima facie case for retaliation.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
126. (Repeat of UF 1, above.) The SED was a unit that assisted BPD detectives. <i>Supporting Evidence:</i> Rodriguez Depo., 26:22-27:17.	Repeat of DF 1, above.
127. (Repeat of UF 2, above.) Rodriguez was assigned to SED from October 2008 until May 2009. <i>Supporting Evidence:</i> Rodriguez Depo., 28:15-20; Lowers Decl., ¶ 4, 1:15.	Repeat of DF 2, above.
128. (Repeat of UF 3, above.) In May 2009, the SED unit was disbanded, and Rodriguez was transferred to a Patrol assignment. <i>Supporting Evidence:</i> Rodriguez Depo., 26:15-21, 43:19-20; FAC ¶ 66.	Repeat of DF 3, above.
129. (Repeat of UF 4, above.) The SED assignment did not involve any additional	Repeat of DF 4, above.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>compensation.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 16: 4-15; Declaration of Trisha Welsh ("Welsh Decl."), ¶¶ 3-5, 13:10-22; Declaration of Tim Stehr ("Stehr Decl."), ¶ 6, 4:25-:5:2.</p> <p>Note regarding supporting evidence: Rodriguez testified that the base rate of pay in these two assignments was the same, but asserted that more overtime work was available in the SED assignment. However, his payroll and timecard records show that Rodriguez actually worked <i>more</i> overtime and was <i>paid more</i> after he transferred back to a Patrol assignment. The payroll records show that during the portion of 2009 that Rodriguez was assigned to SED, his average weekly overtime hours were 9.75 and his average weekly pay was \$2,546.43. After he was transferred to a Patrol assignment in May 2009, Rodriguez's average weekly overtime hours for the remainder of 2009 were 11.63 and his average weekly pay was \$2,574.81.</p>	
<p>130. (Repeat of UF 5, above.) The SED assignment did not involve any change in rank.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 6, 4:25-5:2.</p>	<p>Repeat of DF 5, above.** From hereonin, for all of Defendant's Repeat of their UF statement, Plaintiff incorporates its responses to each herein.</p>
<p><u>Issue No. 13:</u> The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of</p>	

Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Because SED was disbanded, Rodriguez cannot establish that there was a job available for him in SED, which is a necessary element of the prima facie case for retaliation.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>131. (Repeat of UF 2, above.) Rodriguez was assigned to SED from October 2008 until May 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 28:15-17; Lowers Decl. ¶ 4, 1:15</p>	
<p>132. (Repeat of UF 3, above.) In May 2009, the SED unit was disbanded, and Rodriguez was transferred to a Patrol assignment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 26:15-21; 43:19-20; FAC ¶ 66.</p>	
<p>133. (Repeat of UF 8, above.) Sergeant Travis Irving and Officer Steve Karagiosian were also transferred back to Patrol assignments.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 43:11-44:6; Karagiosian Depo., 19:4-22, 31:7-10.</p>	

Issue No. 14: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Rodriguez was assigned to SED by the same person

who recommended SED be disbanded, and the legal doctrine of "same actor presumption" precludes Rodriguez from establishing a prima facie case for discrimination.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
134. (Repeat of UF 9, above.) Rodriguez was selected for the SED assignment by the Captain over the SED unit, Janice Lowers. <i>Supporting Evidence:</i> Rodriguez Depo., 28:15-17; Lowers Decl. ¶ 4, 1:15.	
135. (Repeat of UF 10, above.) The decision to disband the SED unit was made based on the recommendation of Captain Lowers. <i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-10; Lowers Decl. ¶ 5, 1:17-22.	

Issue No. 15: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for the transfer, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
136. (Repeat of UF 3, above.) In May 2009, the SED unit was disbanded, and Rodriguez was transferred to a Patrol assignment.	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p><i>Supporting Evidence:</i> Rodriguez Depo., 26:15-21; 43:19-20; FAC ¶ 66.</p>	
<p>137. (Repeat of UF 12, above.) The SED unit was already in existence when Chief of Police Stehr assumed the position of Police Chief; he did not create the unit.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b), 5:22-6:3.</p>	
<p>138. (Repeat of UF 10, above.) The decision to disband the SED unit was made based on the recommendation of Captain Lowers.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-10; Lowers Decl. ¶ 5, 1:17-22.</p>	
<p>139. (Repeat of UF 14, above.) Lowers' recommendation was accepted by Chief Stehr, who agreed with Lowers that disbanding the unit was the best way to meet the BPD's needs.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-10.</p>	
<p>140. (Repeat of UF 15, above.) At the time the decision to disband SED was made, the Department was facing budgetary constraints which left it understaffed. These constraints had kept the Department from fully staffing SED, and left it with openings in its Patrol Division as well.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20; Lowers Decl. ¶ 5, 1:17-22.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>141. (Repeat of UF 16, above.) Captain Lowers believed, and Chief Stehr agreed, that it was more important to address the needs of the Patrol Division than to provide additional assistance to the detectives, because the Patrol officers are the front-line officers who respond to calls for assistance and provide police presence "on the street."</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20; Lowers Decl. ¶ 5, 1:17-22.</p>	
<p>142. (Repeat of UF 17, above.) At the time the SED unit was disbanded it was staffed by a Sergeant and two police officers. The two officers were Rodriguez and Steve Karagiosian. The two other positions in SED were vacant.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 28:24-29:13.</p>	
<p>143. (Repeat of UF 18, above.) Because the SED unit could not be fully staffed (due to the budgetary constraints), Chief Stehr did not believe the unit could function effectively.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20.</p>	
<p>144. (Repeat of UF 19, above.) Chief Stehr did not believe that a unit that focused on assisting detectives was the best way to use BPD resources.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b),</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
5:22-6:3.	
<p>145. (Repeat of UF 20, above.) Chief Stehr envisioned a unit of uniformed officers (SED officers were plainclothes) within Patrol that would assist the Department with special problems in all areas. Chief Stehr announced his intention to create such a Special Problems Unit at the time he disbanded SED, but the unit has never been created or staffed due to budgetary constraints.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b), 5:22-6:3.</p>	
<p>146. (Repeat of UF 21, above.) In January 2009, Chief Stehr had removed the Sergeant over SED, Neil Gunn, due to concerns about the number of use of force incidents in which Gunn had been involved.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(c), 6:5-8.</p>	
<p>147. (Repeat of UF 22, above.) Captain Lowers had counseled Gurin that, as a supervisor, he should try to avoid becoming personally involved in use of force situations.</p> <p><i>Supporting Evidence:</i> Lowers Decl. ¶ 6, 1:24-27.</p>	
<p>148. (Repeat of UF 23, above.) The Chief and the Captain concluded that Gunn was not following Captain Lowers' instructions in this regard.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Supporting Evidence: Stehr Decl. ¶ 8(d), 6:10-19; Lowers Decl. ¶ 6, 1:24-27.</p>	
<p>149. (Repeat of UF 34, above.) Gunn was replaced as Sergeant over SED by Sergeant Travis Irving in January 2009.</p> <p>Supporting Evidence: Rodriguez Depo., 30:5-8; Stehr Decl. ¶ 8(c), 6:5-8.</p>	
<p>150. (Repeat of UF 25, above.) Irving was also assigned to supervisory duties at the Burbank animal shelter and could not devote his full time to supervising SED.</p> <p>Supporting Evidence: Stehr Decl. ¶ 8(c), 6:5-8.</p>	
<p>151. (Repeat of UF 26, above.) Chief Stehr was concerned about the fact that SED had been supervised by a Sergeant, specifically Sergeant Gunn, whose record on use of force might be subject to scrutiny.</p> <p>Supporting Evidence: Stehr Decl. ¶ 8(d), 6:10-19.</p>	
<p>152. (Repeat of UF 27, above.) At the time the Chief disbanded the SED unit, he had recently learned of allegations that Lieutenant Omar Rodriguez had used unauthorized force in interrogating a witness and had intimidated another police officer into lying to cover-up his misconduct.</p>	

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	<i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-	
3	7:3.	
4	153. (Repeat of UF 28, above.) After learning	
5	about the allegations, Chief Stehr referred the matter	
6	to the Los Angeles County Sheriff's Department for	
7	investigation. Chief Stehr had also recently learned	
8	that the Federal Bureau of Investigation was	
9	conducting its own investigation of use of force by	
10	BPD officers.	
11	<i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-	
12	7:3.	
13	154. (Repeat of UF 29, above.) Chief Stehr was	
14	concerned that officers assigned to the SED unit	
15	could come under increased scrutiny based on the	
16	history of Sergeant Gunn. <i>Supporting Evidence:</i>	
17	Stehr Decl. ¶ 9, 6:21-7:3.	
18	155. (Repeat of UF 30, above.) Chief Stehr's	
19	concern that officers assigned to the SED unit could	
20	come under increased scrutiny had nothing to do	
21	with any improper use of force by Officer Elfego	
22	Rodriguez himself.	
23	<i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-	
24	7:3; Rodriguez Depo., 96:22-97:1 (Rodriguez	
25	testified that he heard rumors that SED had	
26	developed a reputation as having "dirty cops" who	
27	"beat suspects," but that the rumors related to	
28		

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
conduct that occurred before he was in SED).	
<p>156. (Repeat of UF 31, above.) (Repeat of UF 15, above.) Rodriguez had not been in the SED when the events giving rise to Chief Stehr's concerns about Sergeant Gunn had taken place.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-7:3.</p>	
<p>157. (Repeat of UF 32, above.) UF 15 through 31, above, set out the reasons why Chief Stehr accepted Captain Lowers' recommendation to disband SED.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-6:19.</p> <p>Evidence that Rodriguez himself cannot dispute these reasons is his testimony that:</p> <p>(1) He has no basis for thinking that Chief Stehr had any dislike for Hispanic or Guatemalan people (Rodriguez Depo., 384:11-16);</p> <p>(2) His response in deposition, when asked whether he believed that the closure of SED had anything to do with his ethnicity or national origin: "Not necessarily, per se."</p> <p>"Q Do you believe that the fact that -- I'm sorry. Do you believe that your ethnicity or national origin played any role in the decision to close SED?"</p> <p>[Objection omitted.]</p> <p>THE WITNESS: Not necessarily, per se."</p> <p>Rodriguez Depo., 443:16-21.</p> <p>(3) His testimony that his belief that he was</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>retaliated against was just a "feeling" on his part.</p> <p>(Rodriguez Depo., 349:5-19); and</p> <p>(4) His testimony that his belief that the closure of SED was intended to hurt him was speculation on his part:</p> <p>"Q. The chief made the decision to close SED; correct?</p> <p>[Objection omitted.]</p> <p>THE WITNESS: Yes.</p> <p>Q. BY MR. MICHAELS: And in making that decision, he intended to hurt you and Officer Karagiosian, but not the sergeant in charge of that division, Sergeant Irving. That's your opinion; correct?</p> <p>[Objection omitted.]</p> <p>THE WITNESS: Yes.</p> <p>Q. BY MR. MICHAELS: And that is speculation on your part; correct?</p> <p>A. Yes."</p> <p>Rodriguez Depo., 46:21-47:10.</p>	
<p><u>Issue No. 16:</u> The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez first for a position on the SWAT Team. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's decision not to choose Rodriguez first for the SWAT Team position is not an actionable "adverse employment action," which is a necessary element of the prima facie case for retaliation.</p>	
58	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>158. (Repeat of UF 33, above.) Rodriguez was assigned to the SWAT Team in February or March 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 143:19-23.</p>	
<p>159. (Repeat of UF 34, above.) Rodriguez voluntarily left his SWAT Team assignment in late 2009 in order to accept an assignment on the U.S. Marshall's Task Force.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 449:11-23.</p>	
<p>160. (Repeat of UF 35, above.) The SWAT Team trains one day a month.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 137:15-19.</p>	
<p>161. (Repeat of UF 36, above.) During the time Rodriguez was on the SWAT Team, he was never actually called out on an assignment. Rodriguez is aware of only one occasion where the SWAT Team was called out during the time he was on the SWAT Team. He missed that assignment because he was out of range to receive the call out on his cell phone.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 143:16-17, 159:25-160:23; Lynch Decl., ¶ 3, 8:11-15.</p>	
<p>162. (Repeat of UF 37, above.) Members of the</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>SWAT Team receive no extra compensation for the assignment.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 4, 8:17-20.</p>	
<p>163. (Repeat of UF 38, above.) Members of the SWAT Team receive no change in rank.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 4, 8:17-20.</p>	

Issue No. 17: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez first for a position on the SWAT Team. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its decision not to choose Rodriguez first for the SWAT Team position, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>164. (Repeat of UF 39, above.) The SWAT Team is a unit which responds to specific types of emergencies, such as hostage situations and serving high risk search or arrest warrants.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 3, 8:11-15.</p>	
<p>165. (Repeat of UF 40, above.) Officers wishing to serve on the SWAT Team must have at least two</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>years of service on the BPD and must pass a shooting range test and a physical agility/obstacle course test.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 112:21-25, 113:9-25; Lynch Decl. ¶ 4, 8:17-20.</p>	
<p>166. (Repeat of UF 41, above.) Three other officers were selected for the SWAT assignment ahead of Rodriguez: Jeff Barcus, Adam Cornils and Steve Turner.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 128:21-129:10.</p>	
<p>167. (Repeat of UF 42, above.) Officer Barcus had worked as a Deputy County Sheriff before joining the BPD, and had worked on the Sheriff Department's Emergency Response Team.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5(a), 8:27-9:4. Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualifications of Officer Barcus to be on the SWAT Team. Rodriguez Depo., 144:18-20.</p>	
<p>168. (Repeat of UF 43, above.) Officer Cornils had previously worked for the Monrovia Police Department, and spent four years as a member of their SWAT-type team and of a multi-jurisdictional SWAT-type team serving Monrovia and adjacent</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>jurisdictions.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5(b), 9:6-10. Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualifications of Officer Cornils to be on the SWAT Team. Rodriguez Depo., 144:21-23.</p>	
<p>169. (Repeat of UF 44, above.) Officer Turner was a former Marine Corps infantryman, fire team leader, and qualified expert marksman, and was trained in close quarters combat tactics.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5(c), 9:12-14. Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualification of Officer Turner to be on the SWAT Team. Rodriguez Depo., 144:24-145:1.</p>	
<p>170. (Repeat of UF 45, above.) Rodriguez did not have the same training and experience as Barcus, Cornils or Turner.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 6, 9:16-17.</p>	
<p>171. (Repeat of UF 46, above.) The decision to select Officers Barcus, Cornils, and Turner for the SWAT Team before Rodriguez was made by Captain Pat Lynch.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

Supporting Evidence: Lynch Decl. ¶ 7, 9:19-
25.

172. (Repeat of UF 47, above.) Captain Lynch's
decision to select Officers Barcus, Cornils, and
Turner for the SWAT Team before Rodriguez was
based on the qualifications of these officers,
including the fact that each of Officers Barcus,
Cornils and Turner had past experience and special
training which made them particularly well-qualified
for SWAT Team duties, and the fact that Barcus,
Cornils, and Turner performed better than Rodriguez
on the shooting range test and/or the physical
agility/obstacle course test.

Supporting Evidence: Lynch Decl. ¶ 5, 8:22-
9:14 and ¶ 7, 9:19-25.

Evidence that Rodriguez himself cannot dispute this
fact is his testimony that he has no information about
the qualifications of the officers who were selected
for the SWAT Team, or why those officers were
selected:

“Q. BY MR. MICHAELS: What do you know
about the qualifications of Officer Barcus to be on
the SWAT team?

A. Nothing.

Q. What do you know about the qualifications of
Officer Cornils to be on the SWAT team?

A. Nothing.

Q. What do you know about the qualifications of
Officer Turner to be on the SWAT team?

MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

A. Nothing.”

(Rodriguez Depo., 144:18-145:1)

“BY MR. MICHAELS: What factors were the
deciding factors in selecting Officer Barcus over the
other officers on the list when he was selected?

[Objection omitted.]

THE WITNESS: I don't know.

Q. BY MR. MICHAELS: Same question for
Officer Cornils.

[Objection omitted.]

THE WITNESS: I don't know.

Q. BY MR. MICHAELS: Same question for
Officer Turner.

[Objection omitted.]

THE WITNESS: I don't know.”

(Rodriguez Depo., 147:7-22.)

Rodriguez also testified that his belief that he was
retaliated against was just a “feeling” on his part.

Rodriguez Depo., 349:5-19.

173. (Repeat of UF 48, above.) When Rodriguez
was selected for the SWAT Team, he was selected
ahead of other applicants who were white.

Supporting Evidence: Lynch Decl. ¶ 8, 10:1-
2.

1 Issue No. 18: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC,
2 includes and subsumes what is actually a separate cause of action based on Burbank's decision not
3 to select Rodriguez for a temporary training assignment. On said cause of action, there is no
4 triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the
5 following reason: As a matter of law, Burbank's decision not to select Rodriguez for the
6 temporary training assignment is not an actionable "adverse employment action," which is a
7 necessary element of the prima facie case for retaliation.
8

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
10 174. (Repeat of UF 49, above.) Rodriguez was 11 not chosen to fill in as a temporary training officer 12 for a one-week period while the regular training 13 officer was on vacation during the period from June 14 27 through July 4, 2009. 15 <i>Supporting Evidence:</i> Rodriguez Depo., 16 19:13-20:5; Rosoff Decl., ¶ 3, 11:7-13.	
17 175. (Repeat of UF 50, above.) The temporary 18 training assignment (which lasted for one week) did 19 not involve any additional compensation. 20 <i>Supporting Evidence:</i> Rodriguez Depo., 21 21:5-15.	
22 176. (Repeat of UF 51, above.) The temporary 23 training assignment (which lasted for one week) did 24 not involve any change in rank. 25 <i>Supporting Evidence:</i> Stehr Decl. ¶ 7, 5:4-5.	
26 177. (Repeat of UF 52, above.) Rodriguez had 27 served as a Field Training Officer from January 2007 28	

1 MOVING PARTY'S UNDISPUTED MATERIAL
2 FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

until to October 2008.

3 *Supporting Evidence:* FAC ¶ 60; Stehr Decl.
4 ¶ 6, 4:25-5:2.

5
6 Issue No. 19: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC,
7 includes and subsumes what is actually a separate cause of action based on Burbank's decision not
8 to select Rodriguez for a temporary training assignment. On said cause of action, there is no
9 triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the
10 following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory
11 reason for its decision not to select Rodriguez for the temporary training assignment, and
12 Rodriguez cannot show that the reason was pretextual.

14 MOVING PARTY'S UNDISPUTED MATERIAL
15 FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

16 178. (Repeat of UF 49, above.) Rodriguez was
17 not chosen to fill in as a temporary training officer
18 for a one-week period while the regular training
19 officer was on vacation during the period from June
20 27 through July 4, 2009.

21 *Supporting Evidence:* Rodriguez Depo.,
22 19:13-20:5; Rosoff Decl. ¶ 3, 11:7-13.

23 179. (Repeat of UF 54, above.) The officers
24 assigned to fill in as temporary training officers
25 during this week were Officers Krueger and
26 Edwards.

27 *Supporting Evidence:* Rodriguez Depo.,
28 23:1-13; Rosoff Decl. ¶ 3, 11:7-13.

**MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

180. (Repeat of UF 55, above.) Officers Kruger and Edwards were selected by the Watch Commander, Lieutenant Eric Rosoff, based on the fact that they were good officers who had been working continuously in Patrol for at least a year and who had expressed an interest in becoming regular Field Training Officers; Rosoff wanted to assist them in their career development by giving them an opportunity to act as Field Training Officers.

Supporting Evidence: Rosoff Decl. ¶ 4, 8:12-16.

181. (Repeat of UF 52, above.) Rodriguez had served as a Field Training Officer from January 2007 until October 2008.

Supporting Evidence: FAC ¶ 60; Stehr Decl. ¶ 6, 4:25-5:2.

Issue No. 20: Burbank is entitled to summary adjudication as to the entire Third Cause of Action for retaliation in violation of the FEHA, as set forth in the FAC, because Burbank is entitled to summary adjudication as to each of the claims included and subsumed therein, for the reasons stated in Issues 12 through 19, *infra*.

**MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

182. (Repeat of UF 57, above.) Rodriguez identifies the three decisions described above (that is, his transfer from an SED assignment to an

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>assignment in Patrol, the fact that he was not the first officer selected for a position on the SWAT Team, and Burbank's failure to choose him for a temporary assignment training another officer) as the only three reasons he was dissatisfied with his employment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 26:1-14.</p>	
<p>183. (Repeat of UF 58, above.) Rodriguez is currently employed by the BPD.</p> <p><i>Supporting Evidence:</i> Lowers Decl. ¶ 3, 1:12-13.</p>	
<p>184. (Repeat of UF 59 above.) Rodriguez has not been disciplined during his employment with the BPD.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 442:22-23.</p>	
<p>185. (Repeat of UF 60, above.) Rodriguez has not been denied a promotion during his employment with the BPD.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 17:15-20.</p>	
<p>186. (Repeat of UF 61, above.) Each of the performance evaluations Rodriguez has been given during his employment with the BPD reflected the fact that he had been performing his job in an above-satisfactory or better manner.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p><i>Supporting Evidence:</i> Rodriguez Depo., 333:18-25.</p>	
<p>187. (Repeat of UF 62, above.) Rodriguez sought four special assignments and got all of them: Field Training Officer, Special Enforcement Detail, Special Response (or SWAT) Team, and U.S. Marshall's Task Force.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 18:24-19:2, 25:4-16, 28:15-17, 143:16-23, and 449:9-20.</p>	
<p>188. (Repeat of UF 63, above.) Rodriguez does not know of any white officer in the BPD who has a better track record than Rodriguez himself in getting every assignment and duty they requested.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 472:13-18.</p>	
<p>189. Burbank incorporates by reference Undisputed Material Fact Nos. 126 through 181 above.</p>	<p>Plaintiff incorporates his responses to Facts Nos. 126 through 181 herein.</p>

FIFTH CAUSE OF ACTION

(Failure to Prevent Harassment, Discrimination, and Retaliation under the FEHA)

Issue No. 21: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as

1 to any material fact and Burbank is entitled to judgment as a matter of law for the following
2 reason: As a matter of law, the transfer from SED to Patrol is not an actionable "adverse
3 employment action," which is a necessary element of the prima facie case for discrimination and
4 retaliation.

6 **MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

6 **OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

7 190. (Repeat of UF 1, above.) The SED was a
8 unit that assisted BPD detectives.

9 *Supporting Evidence:* Rodriguez Depo.,
10 26:22-27:17.

11 191. (Repeat of UF 2, above.) Rodriguez was
12 assigned to SED from October 2008 until May 2009.

13 *Supporting Evidence:* Rodriguez Depo.,
14 28:15-20; Lowers Decl., ¶ 4, 1:15.

15 192. (Repeat of UF 3, above.) In May 2009, the
16 SED unit was disbanded, and Rodriguez was
17 transferred to a Patrol assignment.

18 *Supporting Evidence:* Rodriguez Depo.,
19 26:15-21, 43:19-20; FAC ¶ 66.

20 193. (Repeat of UF 4, above.) The SED
21 assignment did not involve any additional
22 compensation.

23 *Supporting Evidence:* Rodriguez Depo., 16:
24 4-15; Declaration of Trisha Welsh ("Welsh Decl."),
25 ¶¶ 3-5, 13:10-22; Declaration of Tim Stehr ("Stehr
26 Decl."), ¶ 6, 4:25-:5:2.

27 Note regarding supporting evidence: Rodriguez
28

MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

testified that the base rate of pay in these two assignments was the same, but asserted that more overtime work was available in the SED assignment. However, his payroll and timecard records show that Rodriguez actually worked *more* overtime and was *paid more* after he transferred back to a Patrol assignment. The payroll records show that during the portion of 2009 that Rodriguez was assigned to SED, his average weekly overtime hours were 9.75 and his average weekly pay was \$2,546.43. After he was transferred to a Patrol assignment in May 2009, Rodriguez's average weekly overtime hours for the remainder of 2009 were 11.63 and his average weekly pay was \$2,574.81.

194. (Repeat of UF 5, above.) The SED assignment did not involve any change in rank.

Supporting Evidence: Stehr Decl. ¶ 6, 4:25-5:2.

Issue No. 22: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Because SED was disbanded, Rodriguez cannot establish that there was a job available for him in SED, which is a necessary element of the prima facie case for discrimination and retaliation.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>195. (Repeat of UF 2, above.) Rodriguez was assigned to SED from October 2008 until May 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 28:15-17; Lowers Decl. ¶ 4, 1:15</p>	
<p>196. (Repeat of UF 3, above.) In May 2009, the SED unit was disbanded, and Rodriguez was transferred to a Patrol assignment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 26:15-21; 43:19-20; FAC ¶ 66.</p>	
<p>197. (Repeat of UF 8, above.) Sergeant Travis Irving and Officer Steve Karagiosian were also transferred back to Patrol assignments.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 43:11-44:6; Karagiosian Depo., 19:4-22, 31:7-10.</p>	

Issue No. 23: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a

Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Rodriguez was assigned to SED by the same person who recommended SED be disbanded, and the legal doctrine of "same actor presumption" precludes Rodriguez from establishing a prima facie case for discrimination.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>198. (Repeat of UF 9, above.) Rodriguez was selected for the SED assignment by the Captain over the SED unit, Janice Lowers.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 28:15-17; Lowers Decl. ¶ 4, 1:15.</p>	
<p>199. (Repeat of UF 10, above.) The decision to disband the SED unit was made based on the recommendation of Captain Lowers.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-10; Lowers Decl. ¶ 5, 1:17-22.</p>	

Issue No. 24: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's transfer of Rodriguez from an SED assignment to a Patrol assignment when SED was disbanded. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for the transfer, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
--	---

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>200. (Repeat of UF 3, above.) In May 2009, the SED unit was disbanded, and Rodriguez was transferred to a Patrol assignment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 26:15-21; 43:19-20; FAC ¶ 66.</p>	
<p>201. (Repeat of UF 12, above.) The SED unit was already in existence when Chief of Police Stehr assumed the position of Police Chief; he did not create the unit.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b), 5:22-6:3.</p>	
<p>202. (Repeat of UF 10, above.) The decision to disband the SED unit was made based on the recommendation of Captain Lowers.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-10; Lowers Decl. ¶ 5, 1:17-22.</p>	
<p>203. (Repeat of UF 14, above.) Lowers' recommendation was accepted by Chief Stehr, who agreed with Lowers that disbanding the unit was the best way to meet the BPD's needs.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-10.</p>	
<p>204. (Repeat of UF 15, above.) At the time the decision to disband SED was made, the Department was facing budgetary constraints which left it understaffed. These constraints had kept the Department from fully staffing SED, and left it with</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>openings in its Patrol Division as well.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20; Lowers Decl. ¶ 5, 1:17-22.</p>	
<p>205. (Repeat of UF 16, above.) Captain Lowers believed, and Chief Stehr agreed, that it was more important to address the needs of the Patrol Division than to provide additional assistance to the detectives, because the Patrol officers are the front-line officers who respond to calls for assistance and provide police presence "on the street."</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20; Lowers Decl. ¶ 5, 1:17-22.</p>	
<p>206. (Repeat of UF 17, above.) At the time the SED unit was disbanded it was staffed by a Sergeant and two police officers. The two officers were Rodriguez and Steve Karagiosian. The two other positions in SED were vacant.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 28:24-29:13.</p>	
<p>207. (Repeat of UF 18, above.) Because the SED unit could not be fully staffed (due to the budgetary constraints), Chief Stehr did not believe the unit could function effectively.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(a), 5:12-20.</p>	
<p>208. (Repeat of UF 19, above.) Chief Stehr did</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>not believe that a unit that focused on assisting detectives was the best way to use BPD resources.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b), 5:22-6:3.</p>	
<p>209. (Repeat of UF 20, above.) Chief Stehr envisioned a unit of uniformed officers (SED officers were plainclothes) within Patrol that would assist the Department with special problems in all areas. Chief Stehr announced his intention to create such a Special Problems Unit at the time he disbanded SED, but the unit has never been created or staffed due to budgetary constraints.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(b), 5:22-6:3.</p>	
<p>210. (Repeat of UF 21, above.) In January 2009, Chief Stehr had removed the Sergeant over SED, Neil Gunn, due to concerns about the number of use of force incidents in which Gunn had been involved.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(c), 6:5-8.</p>	
<p>211. (Repeat of UF 22, above.) Captain Lowers had counseled Gunn that, as a supervisor, he should try to avoid becoming personally involved in use of force situations.</p> <p><i>Supporting Evidence:</i> Lowers Decl. ¶ 6, 1:24-27.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>212. (Repeat of UF 23, above.) The Chief and the Captain concluded that Gunn was not following Captain Lowers' instructions in this regard.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(d), 6:10-19; Lowers Decl. ¶ 6, 1:24-27.</p>	
<p>213. (Repeat of UF 34, above.) Gunn was replaced as Sergeant over SED by Sergeant Travis Irving in January 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 30:5-8; Stehr Decl. ¶ 8(c), 6:5-8.</p>	
<p>214. (Repeat of UF 25, above.) Irving was also assigned to supervisory duties at the Burbank animal shelter and could not devote his full time to supervising SED.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(c), 6:5-8.</p>	
<p>215. (Repeat of UF 26, above.) Chief Stehr was concerned about the fact that SED had been supervised by a Sergeant, specifically Sergeant Gunn, whose record on use of force might be subject to scrutiny.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 8(d), 6:10-19.</p>	
<p>216. (Repeat of UF 27, above.) At the time the Chief disbanded the SED unit, he had recently learned of allegations that Lieutenant Omar</p>	

**MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

Rodriguez had used unauthorized force in
interrogating a witness and had intimidated another
police officer into lying to cover-up his misconduct.

Supporting Evidence: Stehr Decl. ¶ 9, 6:21-
7:3.

217. (Repeat of UF 28, above.) After learning
about the allegations, Chief Stehr referred the matter
to the Los Angeles County Sheriff's Department for
investigation. Chief Stehr had also recently learned
that the Federal Bureau of Investigation was
conducting its own investigation of use of force by
BPD officers.

Supporting Evidence: Stehr Decl. ¶ 9, 6:21-
7:3.

218. (Repeat of UF 29, above.) Chief Stehr was
concerned that officers assigned to the SED unit
could come under increased scrutiny based on the
history of Sergeant Gunn. *Supporting Evidence:*
Stehr Decl. ¶ 9, 6:21-7:3.

219. (Repeat of UF 30, above.) Chief Stehr's
concern that officers assigned to the SED unit could
come under increased scrutiny had nothing to do
with any improper use of force by Officer Elfego
Rodriguez himself.

Supporting Evidence: Stehr Decl. ¶ 9, 6:21-
7:3; Rodriguez Depo., 96:22-97:1 (Rodriguez

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1 testified that he heard rumors that SED had</p> <p>2 developed a reputation as having "dirty cops" who</p> <p>3 "beat suspects," but that the rumors related to</p> <p>4 conduct that occurred before he was in SED).</p>	
<p>6 220. (Repeat of UF 31, above.) (Repeat of UF 15,</p> <p>7 above.) Rodriguez had not been in the SED when</p> <p>8 the events giving rise to Chief Stehr's concerns</p> <p>9 about Sergeant Gunn had taken place.</p> <p>10 <i>Supporting Evidence:</i> Stehr Decl. ¶ 9, 6:21-</p> <p>11 7:3.</p>	
<p>12 221. (Repeat of UF 32, above.) UF 15 through 31,</p> <p>13 above, set out the reasons why Chief Stehr accepted</p> <p>14 Captain Lowers' recommendation to disband SED.</p> <p>15 <i>Supporting Evidence:</i> Stehr Decl. ¶ 8, 5:7-</p> <p>16 6:19.</p> <p>17 Evidence that Rodriguez himself cannot dispute</p> <p>18 these reasons is his testimony that:</p> <p>19 (1) He has no basis for thinking that Chief Stehr had</p> <p>20 any dislike for Hispanic or Guatemalan people</p> <p>21 (Rodriguez Depo., 384:11-16);</p> <p>22 (2) His response in deposition, when asked whether</p> <p>23 he believed that the closure of SED had anything to</p> <p>24 do with his ethnicity or national origin: "Not</p> <p>25 necessarily, per se."</p> <p>26 "Q Do you believe that the fact that -- I'm sorry. Do</p> <p>27 you believe that your ethnicity or national origin</p> <p>28 played any role in the decision to close SED?</p> <p>[Objection omitted.]</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>THE WITNESS: Not necessarily, per se.”</p> <p>Rodriguez Depo., 443:16-21.</p> <p>(3) His testimony that his belief that he was retaliated against was just a “feeling” on his part.</p> <p>(Rodriguez Depo., 349:5-19); and</p> <p>(4) His testimony that his belief that the closure of SED was intended to hurt him was speculation on his part:</p> <p>“Q. The chief made the decision to close SED; correct?</p> <p>[Objection omitted.]</p> <p>THE WITNESS: Yes.</p> <p>Q. BY MR. MICHAELS: And in making that decision, he intended to hurt you and Officer Karagiosian, but not the sergeant in charge of that division, Sergeant Irving. That's your opinion; correct?</p> <p>[Objection omitted.]</p> <p>THE WITNESS: Yes.</p> <p>Q. BY MR. MICHAELS: And that is speculation on your part; correct?</p> <p>A. Yes.”</p> <p>Rodriguez Depo., 46:21-47:10.</p>	

Issue No. 25: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank’s decision not to select Rodriguez first for a position on the SWAT Team. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank’s decision not to choose Rodriguez first for the SWAT Team position is not an actionable

1 “adverse employment action,” which is a necessary element of the prima facie case for
2 discrimination and retaliation.
3

MOVING PARTY’S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY’S RESPONSE AND SUPPORTING EVIDENCE
222. (Repeat of UF 33, above.) Rodriguez was 4 assigned to the SWAT Team in February or March 5 2009. 6 7 <i>Supporting Evidence:</i> Rodriguez Depo., 8 143:19-23. 9	
223. (Repeat of UF 34, above.) Rodriguez 10 voluntarily left his SWAT Team assignment in late 11 2009 in order to accept an assignment on the U.S. 12 Marshall’s Task Force. 13 14 <i>Supporting Evidence:</i> Rodriguez Depo., 15 449:11-23.	
224. (Repeat of UF 35, above.) The SWAT Team 16 trains one day a month. 17 18 <i>Supporting Evidence:</i> Rodriguez Depo., 19 137:15-19.	
225. (Repeat of UF 36, above.) During the time 20 Rodriguez was on the SWAT Team, he was never 21 actually called out on an assignment. Rodriguez is 22 aware of only one occasion where the SWAT Team 23 was called out during the time he was on the SWAT 24 Team. He missed that assignment because he was 25 out of range to receive the call out on his cell phone. 26 27 <i>Supporting Evidence:</i> Rodriguez Depo., 28	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
143:16-17, 159:25-160:23; Lynch Decl., ¶ 3, 8:11-15.	
226. (Repeat of UF 37, above.) Members of the SWAT Team receive no extra compensation for the assignment. <i>Supporting Evidence:</i> Lynch Decl. ¶ 4, 8:17-20.	
227. (Repeat of UF 38, above.) Members of the SWAT Team receive no change in rank. <i>Supporting Evidence:</i> Lynch Decl. ¶ 4, 8:17-20.	

Issue No. 26: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez first for a position on the SWAT Team. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its decision not to choose Rodriguez first for the SWAT Team position, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
228. (Repeat of UF 39, above.) The SWAT Team is a unit which responds to specific types of emergencies, such as hostage situations and serving high risk search or arrest warrants.	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Supporting Evidence: Lynch Decl. ¶ 3, 8:11-15.</p>	
<p>229. (Repeat of UF 40, above.) Officers wishing to serve on the SWAT Team must have at least two years of service on the BPD and must pass a shooting range test and a physical agility/obstacle course test.</p> <p>Supporting Evidence: Rodriguez Depo., 112:21-25, 113:9-25; Lynch Decl. ¶ 4, 8:17-20.</p>	
<p>230. (Repeat of UF 41, above.) Three other officers were selected for the SWAT assignment ahead of Rodriguez: Jeff Barcus, Adam Cornils and Steve Turner.</p> <p>Supporting Evidence: Rodriguez Depo., 128:21-129:10.</p>	
<p>231. (Repeat of UF 42, above.) Officer Barcus had worked as a Deputy County Sheriff before joining the BPD, and had worked on the Sheriff Department's Emergency Response Team.</p> <p>Supporting Evidence: Lynch Decl. ¶ 5(a), 8:27-9:4. Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualifications of Officer Barcus to be on the SWAT Team. Rodriguez Depo., 144:18-20.</p>	
<p>232. (Repeat of UF 43, above.) Officer Cornils</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>had previously worked for the Monrovia Police Department, and spent four years as a member of their SWAT-type team and of a multi-jurisdictional SWAT-type team serving Monrovia and adjacent jurisdictions.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5(b), 9:6-10. Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualifications of Officer Cornils to be on the SWAT Team. Rodriguez Depo., 144:21-23.</p>	
<p>233. (Repeat of UF 44, above.) Officer Turner was a former Marine Corps infantryman, fire team leader, and qualified expert marksman, and was trained in close quarters combat tactics.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5(c), 9:12-14. Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualification of Officer Turner to be on the SWAT Team. Rodriguez Depo., 144:24-145:1.</p>	
<p>234. (Repeat of UF 45, above.) Rodriguez did not have the same training and experience as Barcus, Cornils or Turner.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 6, 9:16-17.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>235. (Repeat of UF 46, above.) The decision to select Officers Barcus, Cornils, and Turner for the SWAT Team before Rodriguez was made by Captain Pat Lynch.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 7, 9:19-25.</p>	
<p>236. (Repeat of UF 47, above.) Captain Lynch's decision to select Officers Barcus, Cornils, and Turner for the SWAT Team before Rodriguez was based on the qualifications of these officers, including the fact that each of Officers Barcus, Cornils and Turner had past experience and special training which made them particularly well-qualified for SWAT Team duties, and the fact that Barcus, Cornils, and Turner performed better than Rodriguez on the shooting range test and/or the physical agility/obstacle course test.</p> <p><i>Supporting Evidence:</i> Lynch Decl. ¶ 5, 8:22-9:14 and ¶ 7, 9:19-25.</p> <p>Evidence that Rodriguez himself cannot dispute this fact is his testimony that he has no information about the qualifications of the officers who were selected for the SWAT Team, or why those officers were selected:</p> <p>"Q. BY MR. MICHAELS: What do you know about the qualifications of Officer Barcus to be on the SWAT team?</p> <p>A. Nothing.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

Q. What do you know about the qualifications of
Officer Cornils to be on the SWAT team?

A. Nothing.

Q. What do you know about the qualifications of
Officer Turner to be on the SWAT team?

A. Nothing."

(Rodriguez Depo., 144:18-145:1)

"BY MR. MICHAELS: What factors were the
deciding factors in selecting Officer Barcus over the
other officers on the list when he was selected?

[Objection omitted.]

THE WITNESS: I don't know.

Q. BY MR. MICHAELS: Same question for
Officer Cornils.

[Objection omitted.]

THE WITNESS: I don't know.

Q. BY MR. MICHAELS: Same question for
Officer Turner.

[Objection omitted.]

THE WITNESS: I don't know."

(Rodriguez Depo., 147:7-22.)

Rodriguez also testified that his belief that he was
retaliated against was just a "feeling" on his part.

Rodriguez Depo., 349:5-19.

237. (Repeat of UF 48, above.) When Rodriguez
was selected for the SWAT Team, he was selected
ahead of other applicants who were white.

1	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
2	<i>Supporting Evidence:</i> Lynch Decl. ¶ 8, 10:1-	
3	2.	
4		
5	<u>Issue No. 27:</u> The Fifth Cause of Action for failure to prevent harassment, discrimination and	
6	retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a	
7	separate cause of action based on Burbank's decision not to select Rodríguez for a temporary	
8	training assignment. On said cause of action, there is no triable issue as to any material fact and	
9	Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law,	
10	Burbank's decision not to select Rodriguez for the temporary training assignment is not an	
11	actionable "adverse employment action," which is a necessary element of the prima facie case for	
12	discrimination and retaliation.	
13		
14	MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
15	238. (Repeat of UF 49, above.) Rodriguez was	
16	not chosen to fill in as a temporary training officer	
17	for a one-week period while the regular training	
18	officer was on vacation during the period from June	
19	27 through July 4, 2009.	
20	<i>Supporting Evidence:</i> Rodriguez Depo.,	
21	19:13-20:5; Rosoff Decl., ¶ 3, 11:7-13.	
22	239. (Repeat of UF 50, above.) The temporary	
23	training assignment (which lasted for one week) did	
24	not involve any additional compensation.	
25	<i>Supporting Evidence:</i> Rodriguez Depo.,	
26	21:5-15.	
27	240. (Repeat of UF 51, above.) The temporary	
28		

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>training assignment (which lasted for one week) did not involve any change in rank.</p> <p><i>Supporting Evidence:</i> Stehr Decl. ¶ 7, 5:4-5.</p>	
<p>241. (Repeat of UF 52, above.) Rodriguez had served as a Field Training Officer from January 2007 until to October 2008.</p> <p><i>Supporting Evidence:</i> FAC ¶ 60; Stehr Decl. ¶ 6, 4:25-5:2.</p>	

Issue No. 28: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank's decision not to select Rodriguez for a temporary training assignment. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its decision not to select Rodriguez for the temporary training assignment, and Rodriguez cannot show that the reason was pretextual.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>242. (Repeat of UF 49, above.) Rodriguez was not chosen to fill in as a temporary training officer for a one-week period while the regular training officer was on vacation during the period from June 27 through July 4, 2009.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 19:13-20:5; Rosoff Decl. ¶ 3, 11:7-13.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>243. (Repeat of UF 54, above.) The officers assigned to fill in as temporary training officers during this week were Officers Krueger and Edwards.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 23:1-13; Rosoff Decl. ¶ 3, 11:7-13.</p>	
<p>244. (Repeat of UF 55, above.) Officers Kruger and Edwards were selected by the Watch Commander, Lieutenant Eric Rosoff, based on the fact that they were good officers who had been working continuously in Patrol for at least a year and who had expressed an interest in becoming regular Field Training Officers; Rosoff wanted to assist them in their career development by giving them an opportunity to act as Field Training Officers.</p> <p><i>Supporting Evidence:</i> Rosoff Decl. ¶ 4, 8:12-16.</p>	
<p>245. (Repeat of UF 52, above.) Rodriguez had served as a Field Training Officer from January 2007 until October 2008.</p> <p><i>Supporting Evidence:</i> FAC ¶ 60; Stehr Decl. ¶ 6, 4:25-5:2.</p>	

Issue No. 29: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA includes a claim for failure to prevent harassment. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a

1 matter of law for the following reason: Rodriguez was not subjected to severe or pervasive
2 harassment.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>246. (Repeat of UF 65, above.) The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15.</p>	
<p>247. (Repeat of UF 66, above.) Rodriguez did not send the anonymous letter, and he does not know who did.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 235:3-5.</p>	
<p>248. (Repeat of UF 67, above.) An outside attorney/investigator, Irma Rodriguez Moisa, was hired by BPD to conduct an independent investigation in to the allegations contained in the anonymous letter.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 238:1-8; Stehr Decl. ¶ 3, 4:12-15.</p>	
<p>249. (Repeat of UF 68, above.) Moisa interviewed more than a dozen officers in Spring 2008.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 345:20-346:7; Stehr Decl. ¶ 4, 4:17-19.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>250. (Repeat of UF 69, above.) Rodriguez was one of the officers interviewed by Moisa.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 238:9-10.</p>	
<p>251. (Repeat of UF 70, above.) Rodriguez did not seek out Moisa to make any report or complaint.</p> <p>Moisa contacted him for an interview.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 349:24-350:11.</p> <p>"Q: But it was not a case of you voluntarily initiating a contact with her to make a complaint. You responded to a request to be interviewed; correct?"</p> <p>A: Yes."</p>	
<p>252. (Repeat of UF 71, above.) When he was interviewed by Moisa, Rodriguez told her that he had heard some derogatory comments made about Hispanics years before, when he was a probationary officer, but that since he had become a more experienced officer nobody would make a comment like that in his presence.</p> <p><i>Supporting Evidence:</i></p> <p>"Q. Other -- strike that. You -- do you recall telling Irma Rodriguez that when you were a new officer -- a young officer in the department, still on probation, or shortly thereafter, that you had heard derogatory remarks, but you couldn't recall exactly what they were, made about Hispanics?"</p> <p>A. Yes.</p> <p>Q. Do you recall telling Irma Rodriguez that since you had become a more experienced officer, that people knew you had a strong personality and that now nobody would make a statement like that.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>negative about Hispanics, in your presence?</p> <p>A. Something to that effect.”</p> <p>(Rodriguez Depo., 242:6-18.)</p> <p>***</p> <p>“Q. Okay. Did any of these remarks get said after you were on probation in your presence?</p> <p>[Objection omitted.]</p> <p>Q. BY MR. MICHAELS: After the time that you successfully completed your probation.</p> <p>A. Most of these comments I heard were earlier in my career, right around that time, my first year don't know specifically if some bridged that line after -- after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that.”</p> <p>(Rodriguez Depo., 248:5-16.)</p>	
<p>253. (Repeat of UF 72, above.) Rodriguez told Moisa he heard Hispanics referred to as “paisas” (Spanish slang for countryman or “paisano”), “12500’s” (reference to the Vehicle Code Section prohibiting driving without a licenses), “those people” or “your peeps,” and “Mojados.”</p> <p>Rodriguez also told Moisa he had heard comments about Armenians.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 241:9-12, 243:5-244:24, 244:25-245:12, 245:18-246:5, 246:6-246:9.</p>	
<p>254. (Repeat of UF 73, above.) Rodriguez began working for the BPD in 2004.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo.,</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
126:24 – 127:1.	
<p>255. (Repeat of UF 74, above.) Rodriguez identified only two individuals who made any of these remarks: Officers Aaron Kendrick and Jared Cutler.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 240:3-8, 241:9-12, 244:18-22, 244:25-245:12, 246:6-12, 406:5-13, 406:14-20.</p> <p>“Q. Do you recall anyone specifically who made those remarks?</p> <p>A. I've heard Kendrick refer to them as ‘your peeps’ several times.</p> <p>Q. Anyone else?</p> <p>A. Cutler.</p> <p>Q. Anyone else?</p> <p>A. Not specifically.”</p> <p>Rodriguez Depo., 245:23-246:5.</p>	
<p>256. (Repeat of UF 75, above.) Officer Kendrick was disciplined as a result of Moisa’s investigation and a follow-up internal investigation.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 248:17-23; Stehr Decl. ¶ 5, 4:21-23.</p>	
<p>257. (Repeat of UF 76, above.) Officer Cutler left the Department before any discipline resulting from Moisa’s investigation could be considered.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 248:24-249:12; Stehr Decl. ¶ 5, 4:21-23.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>258. (Repeat of UF 77, above.) Rodriguez's report to Moisa was accurate and complete.</p> <p><i>Supporting Evidence:</i></p> <p>"Q. So you told the truth, the whole truth, and nothing but the truth to Irma Moisa Rodriguez –</p> <p>A. As I remember it, yes."</p> <p>(Rodriguez Depo., 238:11-239:5.)</p>	
<p>259. (Repeat of UF 78, above.) Rodriguez reaffirmed in his deposition testimony what he had told Moisa: that all of the derogatory comments he could recall were made during the first year or so of his career.</p> <p><i>Supporting Evidence:</i></p> <p>"Q. Okay. Did any of these remarks get said after you were on probation in your presence?</p> <p>MR. GRESSEN: Objection. Vague and ambiguous as to "after you were on probation."</p> <p>Q. BY MR. MICHAELS: After the time that you successfully completed your probation.</p> <p>A. Most of these comments I heard were earlier in my career, right around that time, my first year on. I don't know specifically if some bridged that line after -- after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."</p> <p>(Rodriguez Depo., 248:5-16.)</p>	
<p>260. (Repeat of UF 79, above.) Rodriguez initially testified that his report to Moisa included all of the derogatory terms he could recall hearing about Hispanics.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Supporting Evidence: Rodriguez Depo., 246:13-247:10.</p>	
<p>261. (Repeat of UF 80, above.) Rodriguez later testified to hearing the additional terms "gardeners," "Julios," "half breed," and "wetback."</p> <p>Supporting Evidence: Rodriguez Depo., 420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-429:21.</p>	
<p>262. (Repeat of UF 81, above.) Rodriguez is unable to remember who made any of the comment identified in UF 80, or when these terms were used, or the context in which they were used.</p> <p>Supporting Evidence: Rodriguez Depo., 420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-429:21.</p>	
<p>263. (Repeat of UF 82, above.) Sergeant Kelly Frank made the following remark to Rodriguez during Rodriguez's first year to eighteen months in the BPD: "You look like the bad guys we chase."</p> <p>Supporting Evidence: Rodriguez Depo., 310:13-310:23.</p>	
<p>264. (Repeat of UF 83, above.) In making this comment, Frank was referring to the mid-1960's Chevrolet Rodriguez drove, which Frank felt looked like the type of car the Burbank Police Department often sees driven by street racers. Frank did not</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>make this comment for any reason related to Rodriguez's ethnicity or national origin.</p> <p><i>Supporting Evidence:</i> Declaration of Kelly Frank ("Frank Decl."), ¶¶ 3, 12:8-13 and 5, 12:17-20.</p>	
<p>265. (Repeat of UF 84, above.) Rodriguez never asked Frank what he had meant by this comment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 314:10-12.</p>	
<p>266. (Repeat of UF 85, above.) In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were taken from what a witness had said during an interview.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 202:11-21, 289:13-20, 204:18-205:6, and Exhibit 146 to Rodriguez Depo.</p>	
<p>267. (Repeat of UF 86, above.) The phrases on the dry erase board were as follows:</p> <p>"My friend...100 percent."</p> <p>"I tell you everything...100 percent."</p> <p>"Sir, please, I beg you."</p> <p>"Swear to God not 100 percent but 1000 percent."</p> <p>"Burbank police: Sir, what happened? Tell me. What do you know? Well what do you know?."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo.,</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
294:16-295:15 and Exhibit 146 to Rodriguez Depo.	
268. (Repeat of UF 87, above.) Rodriguez considered these phrases to be referring to Armenians because of the use of the phrase "100 percent." <i>Supporting Evidence:</i> Rodriguez Depo., 289:21-290:24.	
269. (Repeat of UF 88, above.) Rodriguez considered the use of this phrase "100 percent" disrespectful or demeaning to Armenians. <i>Supporting Evidence:</i> Rodriguez Depo., 290:22-292:11.	
270. (Repeat of UF 89, above.) Rodriguez has heard Armenians (including Armenian officers in the BPD) use the words "100 percent." <i>Supporting Evidence:</i> Rodriguez Depo., 290:22-292:25.	
271. (Repeat of UF 90, above.) Rodriguez's co-plaintiff Steve Karagiosian (who is Armenian) also observed the quotations written on the dry erase board and discussed the quotations with Lieutenant Armen Dermenjian in Rodriguez's presence. <i>Supporting Evidence:</i> Rodriguez Depo., 209:1-24; FAC ¶ 3.	
272. (Repeat of UF 91, above.) During that conversation, Rodriguez told Dermenjian that he also	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p data-bbox="227 189 909 231">felt the comments on the board were "inappropriate."</p> <p data-bbox="227 252 909 420">Rodriguez does not recall saying anything else on the subject. Rodriguez did not make any other report of the incident because Karagiosian already had.</p> <p data-bbox="227 441 909 546"><i>Supporting Evidence:</i> Rodriguez Depo., 214:16-23, 215:6-17.</p>	
<p data-bbox="227 567 909 924">273. (Repeat of UF 92, above.) Rodriguez testified that the only people he believed deserved discipline for any harassing, discriminatory or retaliatory conduct were Kendrick, Cutler, Frank, and whoever wrote the remarks on the dry erase board.</p> <p data-bbox="227 945 909 1050"><i>Supporting Evidence:</i> Rodriguez Depo., 282:18-284:11.</p>	
<p data-bbox="227 1071 909 1501">274. (Repeat of UF 93, above.) Rodriguez discussed some of the comments he heard with his co-plaintiff Omar Rodriguez but he ceased having any such conversations in early 2008 because, in his words, "my career had moved on and I had kind of gotten away from Officer Cutler and Officer Kendrick, and I was just kind of away on my own."</p> <p data-bbox="227 1522 909 1627"><i>Supporting Evidence:</i> Rodriguez Depo., 314:13-315:22, 357:5-19.</p>	
<p data-bbox="227 1648 909 1816">275. (Repeat of UF 94, above.) Rodriguez did not discuss these matters with Omar Rodriguez for the purpose of reporting them. He did not want them</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>reported. Instead, he told Omar Rodriguez about the comments because he trusted Omar Rodriguez not to repeat them to anyone else.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 376:5-11.</p>	

Issue No. 30: The Fifth Cause of Action for failure to prevent harassment, discrimination and retaliation under the FEHA includes a claim for failure to prevent harassment. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Rodriguez's harassment claims are time-barred under California Government Code Section 12960(d).

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>276. (Repeat of UF 95, above.) Rodriguez filed his DFEH complaint on May 27, 2009. FAC ¶ 67, Exhibit G thereto.</p>	
<p>277. (Repeat of UF 65, above.) The Department received an anonymous letter complaining about racial and ethnic remarks made by unnamed BPD officers.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 234:16-20; Stehr Decl. ¶ 3, 4:12-15.</p>	
<p>278. (Repeat of UF 66, above.) Rodriguez did not send the anonymous letter, and he does not know who did.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo.,</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
235:3-5.	
<p>279. (Repeat of UF 67, above.) An outside attorney/investigator, Irma Rodriguez Moisa, was hired by BPD to conduct an independent investigation in to the allegations contained in the anonymous letter.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 238:1-8; Stehr Decl. ¶ 3, 4:12-15.</p>	
<p>280. (Repeat of UF 68, above.) Moisa interviewed more than a dozen officers in Spring 2008.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 345:20-346:7; Stehr Decl. ¶ 4, 4:17-19.</p>	
<p>281. (Repeat of UF 69, above.) Rodriguez was one of the officers interviewed by Moisa.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 238:9-10.</p>	
<p>282. (Repeat of UF 70, above.) Rodriguez did not seek out Moisa to make any report or complaint. Moisa contacted him for an interview.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 349:24-350:11.</p> <p>“Q: But it was not a case of you voluntarily initiating a contact with her to make a complaint. You responded to a request to be interviewed; correct?”</p> <p>A: Yes.”</p>	
283. (Repeat of UF 71, above.) When he was	

MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE

OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE

interviewed by Moisa, Rodriguez told her that he had heard some derogatory comments made about Hispanics years before, when he was a probationary officer, but that since he had become a more experienced officer nobody would make a comment like that in his presence.

Supporting Evidence:

"Q. Other -- strike that. You -- do you recall telling Irma Rodriguez that when you were a new officer -- a young officer in the department, still on probation, or shortly thereafter, that you had heard derogatory remarks, but you couldn't recall exactly what they were, made about Hispanics?

A. Yes.

Q. Do you recall telling Irma Rodriguez that since you had become a more experienced officer, that people knew you had a strong personality and that now nobody would make a statement like that, negative about Hispanics, in your presence?

A. Something to that effect."

(Rodriguez Depo., 242:6-18.)

"Q. Okay. Did any of these remarks get said after you were on probation in your presence?

[Objection omitted.]

Q. BY MR. MICHAELS: After the time that you successfully completed your probation.

A. Most of these comments I heard were earlier in my career, right around that time, my first year don't know specifically if some bridged that line after -- after the year mark. But shortly after that I left the Thursday, Friday, Saturday day shift, and I didn't hear those comments after I left that."

(Rodriguez Depo., 248:5-16.)

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>284. (Repeat of UF 72, above.) Rodriguez told Moisa he heard Hispanics referred to as "paisas" (Spanish slang for countryman or "paisano"), "12500's" (reference to the Vehicle Code Section prohibiting driving without a licenses), "those people" or "your peeps," and "Mojados." Rodriguez also told Moisa he had heard comments about Armenians.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 241:9-12, 243:5-244:24, 244:25-245:12, 245:18-246:5, 246:6-246:9.</p>	
<p>285. (Repeat of UF 73, above.) Rodriguez began working for the BPD in 2004.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 126:24 – 127:1.</p>	
<p>286. (Repeat of UF 74, above.) Rodriguez identified only two individuals who made any of these remarks: Officers Aaron Kendrick and Jared Cutler.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 240:3-8, 241:9-12, 244:18-22, 244:25-245:12, 246:6-12, 406:5-13, 406:14-20.</p> <p>"Q. Do you recall anyone specifically who made those remarks?</p> <p>A. I've heard Kendrick refer to them as 'your peeps' several times.</p> <p>Q. Anyone else?</p> <p>A. Cutler.</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>Q. Anyone else?</p> <p>A. Not specifically.”</p> <p>Rodriguez Depo., 245:23-246:5.</p>	
<p>287. (Repeat of UF 75, above.) Officer Kendrick was disciplined as a result of Moisa’s investigation and a follow-up internal investigation.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 248:17-23; Stehr Decl. ¶ 5, 4:21-23.</p>	
<p>288. (Repeat of UF 76, above.) Officer Cutler left the Department before any discipline resulting from Moisa’s investigation could be considered.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 248:24-249:12; Stehr Decl. ¶ 5, 4:21-23.</p>	
<p>289. (Repeat of UF 77, above.) Rodriguez’s report to Moisa was accurate and complete.</p> <p><i>Supporting Evidence:</i></p> <p>“Q. So you told the truth, the whole truth, and nothing but the truth to Irma Moisa Rodriguez –</p> <p>A. As I remember it, yes.”</p> <p>(Rodriguez Depo., 238:11-239:5.)</p>	
<p>290. (Repeat of UF 78, above.) Rodriguez reaffirmed in his deposition testimony what he had told Moisa: that all of the derogatory comments he could recall were made during the first year or so of his career.</p> <p><i>Supporting Evidence:</i></p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1 "Q. Okay. Did any of these remarks get said after</p> <p>2 you were on probation in your presence?</p> <p>3</p> <p>4 MR. GRESEN: Objection. Vague and ambiguous</p> <p>5 as to "after you were on probation."</p> <p>6</p> <p>7 Q. BY MR. MICHAELS: After the time that you</p> <p>8 successfully completed your probation.</p> <p>9</p> <p>10 A. Most of these comments I heard were earlier in</p> <p>11 my career, right around that time, my first year on. I</p> <p>12 don't know specifically if some bridged that line</p> <p>13 after -- after the year mark. But shortly after that I</p> <p>14 left the Thursday, Friday, Saturday day shift, and I</p> <p>15 didn't hear those comments after I left that."</p> <p>16 (Rodriguez Depo., 248:5-16.)</p>	
<p>17 291. (Repeat of UF 79, above.) Rodriguez</p> <p>18 initially testified that his report to Moisa included all</p> <p>19 of the derogatory terms he could recall hearing about</p> <p>20 Hispanics.</p> <p>21 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>22 246:13-247:10.</p>	
<p>23 292. (Repeat of UF 80, above.) Rodriguez later</p> <p>24 testified to hearing the additional terms "gardeners,"</p> <p>25 "Julios," "half breed," and "wetback."</p> <p>26 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>27 420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-</p> <p>28 429:21.</p>	
<p>29 293. (Repeat of UF 81, above.) Rodriguez is</p> <p>30 unable to remember who made any of the comment</p> <p>31 identified in UF 80, or when these terms were used,</p> <p>32 or the context in which they were used.</p> <p>33 <i>Supporting Evidence:</i> Rodriguez Depo.,</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>420:4-421:2, 422:14-424:4, 425:3-426:9, 428:21-429:21.</p>	
<p>294. (Repeat of UF 82, above.) Sergeant Kelly Frank made the following remark to Rodriguez during Rodriguez's first year to eighteen months in the BPD: "You look like the bad guys we chase."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 310:13-310:23.</p>	
<p>295. (Repeat of UF 83, above.) In making this comment, Frank was referring to the mid-1960's Chevrolet Rodriguez drove, which Frank felt looked like the type of car the Burbank Police Department often sees driven by street racers. Frank did not make this comment for any reason related to Rodriguez's ethnicity or national origin.</p> <p><i>Supporting Evidence:</i> Declaration of Kelly Frank ("Frank Decl."), ¶¶ 3, 12:8-13 and 5, 12:17-20.</p>	
<p>296. (Repeat of UF 84, above.) Rodriguez never asked Frank what he had meant by this comment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 314:10-12.</p>	
<p>297. (Repeat of UF 85, above.) In early 2009, Rodriguez observed some quotations written on a dry erase board in the Detective Bureau, which Rodriguez was told were taken from what a witness</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>had said during an interview.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 202:11-21, 289:13-20, 204:18-205:6, and Exhibit 146 to Rodriguez Depo.</p>	
<p>298. (Repeat of UF 86, above.) The phrases on the dry erase board were as follows:</p> <p>"My friend...100 percent."</p> <p>"I tell you everything...100 percent."</p> <p>"Sir, please, I beg you."</p> <p>"Swear to God not 100 percent but 1000 percent."</p> <p>"Burbank police: Sir, what happened? Tell me. What do you know? Well what do you know?."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 294:16-295:15 and Exhibit 146 to Rodriguez Depo.</p>	
<p>299. (Repeat of UF 87, above.) Rodriguez considered these phrases to be referring to Armenians because of the use of the phrase "100 percent."</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 289:21-290:24.</p>	
<p>300. (Repeat of UF 88, above.) Rodriguez considered the use of this phrase "100 percent" disrespectful or demeaning to Armenians.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 290:22-292:11.</p>	
<p>301. (Repeat of UF 89, above.) Rodriguez has</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1 heard Armenians (including Armenian officers in the</p> <p>2 BPD) use the words "100 percent."</p> <p>3</p> <p>4 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>5 290:22-292:25.</p>	
<p>6 302. (Repeat of UF 90, above.) Rodriguez's co-</p> <p>7 plaintiff Steve Karagiosian (who is Armenian) also</p> <p>8 observed the quotations written on the dry erase</p> <p>9 board and discussed the quotations with Lieutenant</p> <p>10 Armen Dermenjian in Rodriguez's presence.</p> <p>11 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>12 209:1-24; FAC ¶ 3.</p>	
<p>13 303. (Repeat of UF 91, above.) During that</p> <p>14 conversation, Rodriguez told Dermenjian that he also</p> <p>15 felt the comments on the board were "inappropriate."</p> <p>16 Rodriguez does not recall saying anything else on</p> <p>17 the subject. Rodriguez did not make any other report</p> <p>18 of the incident because Karagiosian already had.</p> <p>19 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>20 214:16-23, 215:6-17.</p>	
<p>21 304. (Repeat of UF 92, above.) Rodriguez</p> <p>22 testified that the only people he believed deserved</p> <p>23 discipline for any harassing, discriminatory or</p> <p>24 retaliatory conduct were Kendrick, Cutler, Frank,</p> <p>25 and whoever wrote the remarks on the dry erase</p> <p>26 board.</p> <p>27 <i>Supporting Evidence:</i> Rodriguez Depo.,</p> <p>28</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
282:18-284:11.	
305. (Repeat of UF 93, above.) Rodriguez discussed some of the comments he heard with his co-plaintiff Omar Rodriguez but he ceased having any such conversations in early 2008 because, in his words, "my career had moved on and I had kind of gotten away from Officer Cutler and Officer Kendrick, and I was just kind of away on my own." <i>Supporting Evidence:</i> Rodriguez Depo., 314:13-315:22, 357:5-19.	
306. (Repeat of UF 94, above.) Rodriguez did not discuss these matters with Omar Rodriguez for the purpose of reporting them. He did not want them reported. Instead, he told Omar Rodriguez about the comments because he trusted Omar Rodriguez not to repeat them to anyone else. <i>Supporting Evidence:</i> Rodriguez Depo., 376:5-11.	
<p><u>Issue No. 31:</u> Burbank is entitled to summary adjudication as to the entire Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment in violation of the FEHA, as set forth in the FAC, because Burbank is entitled to summary adjudication as to each of the claims included and subsumed therein, for the reasons stated in Issues 21 through 30, <i>infra</i>.</p>	
MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
307. (Repeat of UF 57, above.) Rodriguez	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>identifies the three decisions described above (that is, his transfer from an SED assignment to an assignment in Patrol, the fact that he was not the first officer selected for a position on the SWAT Team, and Burbank's failure to choose him for a temporary assignment training another officer) as the only three reasons he was dissatisfied with his employment.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 26:1-14.</p>	
<p>308. (Repeat of UF 58, above.) Rodriguez is currently employed by the BPD.</p> <p><i>Supporting Evidence:</i> Lowers Decl. ¶ 3, 1:12-13; FAC ¶ 4. .</p>	
<p>309. (Repeat of UF 59, above.) Rodriguez has not been disciplined during his employment with the BPD.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 442:22-23.</p>	
<p>310. (Repeat of UF 60, above.) Rodriguez has not been denied a promotion during his employment with the BPD.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 17:15-20.</p>	
<p>311. (Repeat of UF 61, above.) Each of the performance evaluations Rodriguez has been given during his employment with the BPD reflected the</p>	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>fact that he had been performing his job in an above-satisfactory or better manner.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 333:18-25.</p>	
<p>312. (Repeat of UF 62, above.) Rodriguez sought four special assignments and got all of them: Field Training Officer, Special Enforcement Detail, Special Response (or SWAT) Team, and U.S. Marshall's Task Force.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 18:24-19:2, 25:4-16, 28:15-17, 143:16-23, and 449:9-20.</p>	
<p>313. (Repeat of UF 63, above.) Rodriguez does not know of any white officer in the BPD who has a better track record than Rodriguez himself in getting every assignment and duty they requested.</p> <p><i>Supporting Evidence:</i> Rodriguez Depo., 472:13-18.</p>	
<p>314. Burbank incorporates by reference Undisputed Material Fact Nos. 190 through 306 above.</p>	<p>Plaintiff incorporates his responses to Facts Nos. 190 through 306 herein.</p>

SIXTH CAUSE OF ACTION

(Violation of Public Safety Officers Procedural Bill of Rights ("POBRA")/Government Code Section 3300 *et seq.*)

Issue No. 32: There is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law on the Sixth Cause of Action for violation of POBRA because POBRA does not create an alternate remedy for FEHA claims, and there is no remedy under POBRA for any discrimination, harassment or retaliation, as alleged in the FAC.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
This issue raises a question of pure law. There are no undisputed material facts necessary to support this Issue.	Disputed. As Plaintiff's Opposition states, the BPD has committed additional violations of POBRA since the filing of the FAC. As such, Defendant's motion should be treated as a motion for Judgment on the Pleadings and Plaintiff should, under California law, be permitted to amend his complaint. See section IX of Plaintiff's Opposition.

Issue No. 33: There is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law on the Sixth Cause of Action for violation of POBRA for the same reasons it is entitled judgment as a matter of law on Rodriguez's FEHA causes of action (*see* Issues 1 through 9, 10 through 11, 12 through 20, 21 through 31, *infra*).

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
315. Burbank incorporates by reference Undisputed Material Fact Nos. 1 through 314, above.	Plaintiff incorporates his responses to Facts Nos. 1 through 314 above.

1 Issue No. 34: There is no triable issue as to any material fact and Burbank is entitled to judgment
2 as a matter of law on the Sixth Cause of Action for violation of POBRA because all relevant
3 provisions of POBRA deal specifically with the imposition of discipline or the denial of
4 promotions, and Rodriguez was never disciplined nor denied a promotion.

6 **MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

7 316. (Repeat of UF 59, above.) Rodriguez has not
8 been disciplined during his employment with the
9 BPD.

10 *Supporting Evidence:* Rodriguez Depo.,
11 442:22-23.

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

12 317. (Repeat of UF 60, above.) Rodriguez has not
13 been denied a promotion during his employment
14 with the BPD.

15 *Supporting Evidence:* Rodriguez Depo.,
16 17:15-20.

17
18
19 Issue No. 35: There is no triable issue as to any material fact and Burbank is entitled to judgment
20 as a matter of law on the Sixth Cause of Action for violation of POBRA because Rodriguez failed
21 to file a claim alleging any POBRA violation under the Government Claims Act, and his failure to
22 so file bars him from filing a lawsuit for POBRA violations against Burbank.

24 **MOVING PARTY'S UNDISPUTED MATERIAL
FACTS AND SUPPORTING EVIDENCE**

25 318. Rodriguez filed his Government Claim with
26 the City on May 27, 2009.

27 *Supporting Evidence:* FAC 67¶, Exhibit H
28

**OPPOSING PARTY'S RESPONSE
AND SUPPORTING EVIDENCE**

Undisputed.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
thereto.	
<p>319. Rodriguez's Government Claim form makes no mention of any claim under POBRA.</p> <p><i>Supporting Evidence:</i> FAC 67¶, Exhibit H thereto.</p>	<p>Undisputed. But as Plaintiff's Memorandum of Points and Authorities articulates since the filing of Plaintiff's First Amended Complaint, the BPD has committed additional further POBRA violations against Plaintiff. See Section VII of Plaintiff's Memorandum of Points and Authorities. As such, this court should properly treat Defendant's motion as one for judgment on the pleadings and grant Plaintiff the right to amend his complaint. See footnotes of Plaintiff's Memorandum of Points and Authorities.</p>

SEVENTH CAUSE OF ACTION

(Injunctive Relief)

Issue No. 36: There is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law on the Seventh Cause of Action for “injunctive relief” for the reasons it is entitled to judgment as a matter of law on Rodriguez’s other causes of action (*see* Issues 1 through 9, 10 through 11, 12 through 20, 21 through 31, 32 through 35, *infra*).

MOVING PARTY’S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY’S RESPONSE AND SUPPORTING EVIDENCE
320. Burbank incorporates by reference Undisputed Material Fact Nos. 1 through 319.	Plaintiff incorporates his responses to Facts Nos. 1 through 319 above.

1 Plaintiff, ELFEGO RODRIGUEZ also submits the following statement of additional
2 material facts that raise a triable issue, together with references to supporting evidence, in
3 opposition to Defendants Motion for Summary Judgment, or Alternatively, Summary
4 Adjudication against Plaintiff ELFEGO-RODRIGUEZ.

5 **ISSUE NO. 1**

6 **WHETHER DEFENDANT CITY OF BURBANK VIOLATED THE FAIR**
7 **EMPLOYMENT AND HOUSING ACT.**

8 9 10 11 12 13	ADDITIONAL MATERIAL FACTS	SUPPORTING EVIDENCE
14 15 16 17	321. The Burbank Police Department is organized into four divisions, in order of prestige and importance: (1) Administrative, (2) Investigation; (3) operations, and (4) Patrol.	O. Rodriguez Decl. ¶10, 3:8-11; ¶¶ 3-7, 2:2-23.
18 19 20	322. When an applicant is hired following academy training, or laterals in as an officer from another enforcement agency, he or she is placed in the Patrol Division as a regular patrol officer.	O. Rodriguez Decl. ¶13, 4:2-8.
21 22 23 24 25 26 27 28	323. Patrol officers work a "beat," that is, they patrol a specific geographic area, usually in a police car.	O. Rodriguez Decl. ¶13, 4:2-8; ¶28, 6:27-7:1.
	324. The probationary period for a new officer is one year. During the first six months, the patrol officer is assigned to three Field Training Officers ("FTO"). The patrol officer partners with and works under the guidance of each of the three FTOs for a two month period. At the end of the first six months, if all three FTOs determine that the rookie patrol officer is ready, the officer will be assigned a car,	O. Rodriguez Decl. ¶10, 3:8-11; ¶¶ 3-7, 2:2-23.

1	and will complete the year-long probation on his	
2	own beat.	
3	325. After passing the one-year probationary	O. Rodriguez Decl. ¶13, 4:1-8.
4	period, the officer attains civil service status and can	
5	only be terminated for cause and is entitled to certain	
6	due process rights.	
7	326. The patrol officer's only real exposure to	O. Rodriguez Decl. ¶28, 6:27; 7:1.
8	management is with his or her Patrol sergeant, and	
9	other Patrol Division managers at the beginning and	
10	end of the shift. They receive their field instructions	
11	from Dispatch, and beat work is considered routine	
12	when compared to other specialized units.	
13	327. Some assignments are more sought after and	O. Rodriguez Decl. ¶¶20-27, 5:9 - 6:26.
14	prestigious than others because they offer exposure	
15	to upper management (and, in some cases, other	
16	federal, state and county agencies) and the	
17	opportunity for broader experience and training.	
18	328. Field Training Officer. Assignment as an	Taylor Decl., ¶9, 4:17-18.
19	FTO is considered a very prestigious assignment and	
20	is an unofficial prerequisite to a promotion to	
21	sergeant or above.	
22	329. The competition for an FTO assignment is	O. Rodriguez Decl. ¶13-17, 4:1-21;
23	fierce and certain requisites must be met in order to	Taylor Decl., ¶10, 4:25-26.
24	be considered. First, the officer applicant must have	
25	at least two years experience as an officer with the	
26	Department.	
27	330. Second, the officer applicant must be	O. Rodriguez Decl. ¶13-17, 4:1-21;
28		

1	recognized by senior officers and through annual	Taylor Decl., ¶10, 4:25-26.
2	performance evaluations as an excellent officer.	
3	331. Third, the officer applicant must submit a	O. Rodriguez Decl. ¶13-17, 4:1-21
4	written memorandum of interest which sets forth the	
5	officer's basic qualifications as well as any unique	
6	skills or experience that the officer can contribute to	
7	the training experience.	
8	332. Fourth, the officer applicant must pass an	O. Rodriguez Decl. ¶13-17, 4:1-21;
9	oral interview.	Taylor Decl., ¶10, 4:25-26.
10	333. Despite numerous obstacles, Plaintiff, as well	E. Rodriguez Decl. ¶11, 3:18-22;
11	as two other plaintiffs in this action – Omar	Karagiosian Decl., ¶32, 6:4-5.
12	Rodriguez and Steve Karagiosian – managed to earn	
13	appointments as Field Training Officers.	
14	334. Special Response Team (“SRT”). Inclusion	E. Rodriguez Decl. ¶16-20, 4:14-25;
15	on the Special Response Team (“SRT”), unlike other	O. Rodriguez Decl. ¶32-33, 7:13-25.
16	assignments, is not full time. The SRT is Burbank's	
17	version of a “SWAT” team.	
18	335. An officer in any assignment can be	E. Rodriguez Decl. ¶11, 3:18-22.
19	simultaneously assigned to SRT.	
20	336. Assignment to SRT is not a routine or	Dunn Decl. ¶2, 2:5-8.
21	random of assignment. An officer must have special	
22	qualifications in order to be assigned to SRT. An	
23	officer must pass a marksmanship test as well as a	
24	physical agility/obstacle test.	
25	337. The officer is ranked solely upon his or her	E. Rodriguez Decl. ¶16-20, 4: 16-28.
26	performance on these two tests. The physical	
27	agility/obstacle course test is graded on a pass/fail	
28		

1	basis. The firearm qualification test is graded in	
2	terms of the applicant's actual marksmanship score.	
3	338. The Department may also consider other	Dunn Decl. ¶4, 2:12-14.
4	experience if that experience is <i>relevant</i> to SRT	
5	duties. For example, an officer with specific SWAT	
6	experience on another agency's SWAT team is	
7	relevant. However, it is the exception, and not the	
8	rule, to select SRT officers based on previous	
9	experience.	
10	339. A former Marine's "expert marksman"	Dunn Decl. ¶5, 2:15-24.
11	qualification is irrelevant to selection to a SRT	
12	assignment since the actual scoring criteria is inferior	
13	to criteria for the BPD's "distinguished expert"	
14	designation. All BPD SRT members must have a	
15	"distinguished expert" designation in marksmanship.	
16	340. Experience as a "custody deputy" on the Los	Dunn Decl. ¶6, 2:25-3:4.; O. Rodriguez
17	Angeles Sheriff's Department ("LASD")	Decl. ¶__, p. __, line __.
18	Emergency Response Team ("ERT") is irrelevant to	
19	selection to a SRT assignment. All deputies who at	
20	some point are assigned to a jail are "custody	
21	deputies" and all are on the ERT. LASD ERT	
22	members receive no special training.	
23	341. In 2007, Plaintiff first applied for assignment	E. Rodriguez Depo., 112:18-115:5; E.
24	to SRT. Plaintiff passed his physical agility/obstacle	Rodriguez Decl. ¶¶17-20, 4:17-28.
25	course test, which is a pass/fail examination.	
26	342. In 2007, Plaintiff excelled on his firearm	E. Rodriguez Decl. ¶17, 4:17-20; O.
27	qualification/marksmanship test, outperforming	Rodriguez Decl. ¶54, 10:15-22.
28		

1	Officer Barcus.	
2	343. Despite Plaintiff being the stronger, more	E. Rodriguez Depo., 443:23-430:14; E.
3	qualified applicant, Officer Barcus, a Caucasian, was	Rodriguez Decl. ¶¶16-20, 4:14-28.
4	selected for assignment to SRT, and not Plaintiff.	
5	344. In 2008, Plaintiff applied a second time for	E. Rodriguez Depo., 443:23-430:14; E.
6	assignment to SRT. Plaintiff once again passed his	Rodriguez Decl. ¶¶16-20, 4:14-28.
7	physical agility/marksmanship test. This time,	
8	Plaintiff scored the best on the firearm	
9	qualification/marksmanship test, outperforming both	
10	Officers Turner and Cornils.	
11	345. Despite being the best qualified applicant for	E. Rodriguez Depo., 443:23-430:14; E.
12	selection to a SRT assignment, Plaintiff was once	Rodriguez Decl. ¶¶16-20, 4:14-28.
13	again passed over for a SRT assignment	
14	346. Conflicting reasons were given to Plaintiff as	E. Rodriguez Depo., 443:23-430:14; E.
15	to why he was passed over twice. He was told one	Rodriguez Decl. ¶¶16-20, 4:14-28.
16	time that he worked too much overtime on his full	
17	time assignment for consideration.	
18	347. The Department now claims that he was less	See Disputed Facts Nos. 342 and 343,
19	qualified than the other candidates. Such is not true.	supra.
20		
21	348. Special Enforcement Detail ("SED"). Of	E. Rodriguez Decl. ¶14, 4:4-8; O.
22	all of the specialized assignments, e.g., bike patrol,	Rodriguez Decl. ¶¶20-22, 5:9-28.
23	school resources officer, SRT, FTO, gang detail, the	Taylor Decl. ¶12, 5:14-15.
24	Special Enforcement Detail is the most prestigious	
25	and most sought after assignment.	
26	349. SED is the oldest specialized detail in the	Taylor Decl., ¶12, 5:6-8;
27	Department – SED has been an active detail for the	O. Rodriguez Decl. ¶20, 5:9-11.
28	past thirty years.	

350. Among the most important reasons for this detail's prestige are the opportunities: (a) to obtain the necessary skills and knowledge to become a detective and/or promotion in departments other than patrol; (b) for exposure of one's skills and talents to multiple units and divisions within the department; and (c) career-enhancing exposure to and opportunities to participate in various federal, state and county law enforcement task forces sponsored by agencies, such as the DEA, ATF, ICE, FBI, DVM, Postal Inspectors, etc. BPD does not select the officers for assignment to these task forces. The task forces identify and select the officers that they want. Therefore exposure is critical, and this type of exposure is not available if an officer is assigned to patrol.

Taylor Decl., ¶12, 5:14-21;
O. Rodriguez Decl. ¶20-31, 5:9 7:11.

351. The application process for selection to SED is grueling. First, in order to apply, an officer must possess at least three years experience as a police officer, and at least two of those years must be with the BPD.

Taylor Decl., ¶12, 5:14-21;.

352. The officer must submit a memorandum of interest which sets forth all of his qualifications, including unique qualifications such as foreign language skills, specialized law enforcement education, etc. The officer must also submit a resume.

Taylor Decl., ¶12, 5:8-11.

1	353. There is an oral interview with three high	Taylor Decl., ¶12, 5:11-12; O. Rodriguez
2	ranking officers.	Decl. ¶22, 5:20-28.
3	354. Based on the aforementioned qualifications,	O. Rodriguez Decl. ¶5, 5:20-28.
4	submission and interview, the applicant is ranked. If	
5	an applicant's rank is sufficiently high, the candidate	
6	may be assigned to the SED.	
7	355. SED is one of the few assignments with a	S. Karagiosian Decl., ¶22, 4:12-23.
8	fixed term: three years.	
9	356. Any officer who successfully completes a	Taylor Decl., ¶13, 5:22-24; O. Rodriguez
10	three year assignment with the SED is almost always	E. Rodriguez Decl. ¶14, 4:4-8.
11	guaranteed a promotion to the rank of Detective if	
12	that officer applies for such promotion.	
13	357. For the past twenty years, every officer who	Taylor Decl., ¶13, 5:22-24; O. Rodriguez
14	has <i>successfully</i> completed the SED assignment has	Decl. ¶27, 6:24-26.
15	been promoted to Detective. An officer who	
16	completes an SED assignment is considered "the	
17	best of the best."	
18	358. First, an SED officer performs detective work	Taylor Decl., ¶12, 5:15-17; O. Rodriguez
19	and works with detectives. An SED officer learns	Decl. ¶¶22-27, 5:9-6:26; E. Rodriguez
20	and applies the laws that relate to detective work. An	Decl. ¶¶13-15, 3:27-4:12.
21	SED officer develops law enforcement contacts and	
22	resources (frequently through coordination with	
23	various Task Force) outside the BPD which will be	
24	useful to him personally, and to the Detective Bureau	
25	in general.	
26	359. When Plaintiff joined the BPD in 2004, he	E. Rodriguez Decl. ¶4, 2:10-13.
27	was subjected to regular humiliating insults and	
28		

1	treatment by both his peers and by superior officers.	
2	He said nothing because he was on probation.	
3	360. Even after Plaintiff completed his probation,	E. Rodriguez Decl. ¶5, 2:14-18.
4	the insults continued. Plaintiff rarely complained	
5	because many of the perpetrators of this treatment	
6	were known social friends of the Chief and other	
7	high ranking officers, and retaliation would be a	
8	likely result.	
9	361. Starting in 2007, Plaintiff did complain to	E. Rodriguez Decl. ¶8, 3:3-7.
10	both Lt. Omar Rodriguez (another plaintiff in this	
11	action) and to Lt. Armen Dermenjian.	
12	362. One incident about which Plaintiff	Frank admits making the statement that
13	complained was the discriminating language	" <u>you</u> " look like the bad guys we chase.
14	employed by Sgt. Kelly Frank. Frank encountered	DF #82. Frank did not say " <u>your car</u> "
15	him in the police parking garage, confronted him,	looks like the bad guys we chase. Further,
16	and said, "You look like the guys we chase."	Detective Frank said these words when
17		Plaintiff Rodriguez was outside of his car
18		and he referred directly to Plaintiff
19		Rodriguez. As a result, a trier of fact
20		could find that Detective Frank was not
21		referring to the car and was, in fact,
22		referring to Elfego Rodriguez. See also E.
23		Rodriguez Decl., ¶¶6-7, 2:19-3:2.
24		
25		
26	363. Franks admits to making the statement	Frank admits making the statement that
27	referenced above to Plaintiff. Frank now belatedly	" <u>you</u> " look like the bad guys we chase.
28	explains that he was referencing Plaintiff's vintage,	

1 classic car, and not Plaintiff's personal appearance.	DF #82. Frank did not say " <u>your car</u> "
2 Franks admits that he used the word "you," and did	looks like the bad guys we chase. Further,
3 not say, "Your car looks like the ones we chase."	Detective Frank said these words when
4	Plaintiff Rodriguez was outside of his car
5	and he referred directly to Plaintiff
6	Rodriguez. As a result, a trier of fact
7	could find that Detective Frank was not
8	referring to the car and was, in fact,
9	referring to Elfego Rodriguez. See also E.
10	Rodriguez Decl., ¶¶6-7, 2:19-3:2.
11	
12	
13 364. At the time Frank made the statement,	E. Rodriguez Decl. ¶7, 2:23-3:2.
14 Plaintiff had not yet purchased the car that Frank	
15 referenced.	
16 365.	
17 366. In March 2008, anonymous letters were sent	Disputed. The anonymous letter also
18 to the BPD union and various Burbank city officials.	complained about the BPD creating a
19 These letters complained about wide-spread racism	hostile work environment. See E.
20 within the BPD.	Rodriguez Depo., ¶234, 16-20. Stehr
21	Decl., ¶3, 4:12-15.
22	
23 367. The Department hired an outside attorney to	E. Rodriguez Depo., ¶23, 8:1-8; 345:20-
24 audit the workplace. Out of approximately 165	346:7; Stehr Decl. ¶3, 4:12-15; ¶4, 4:17-
25 officers, the attorney interviewed 13 people in just	19.
26 one day.	
27 368. Although Chief Stehr stated that the report	
28 that issued as a result of the investigation indicated	

1	numerous and widespread instances of	
2	discrimination, he planned to investigate only two	
3	incidents.	
4	369. On November 8, 2008, in front of	O. Rodriguez Decl. ¶¶47-48, 9:22-10:5.
5	approximately 25 BPD managers, Chief Stehr said "I	
6	remember a time when it was okay to use the words	
7	"nigger" around here. Chief Stehr approached Lt.	
8	Omar Rodriguez and asked what he thought about	
9	the incident in which he stated that it was once okay	
10	to use the word "nigger." When Lt. Rodriguez said	
11	that the word was offensive, Chief Stehr said, "Fuck	
12	me!" and walked out of the room.	
13	370. Within a few hours, most BPD officers,	E. Rodriguez Decl. ¶9, 3:18-25; O.
14	including Plaintiff, became aware that the Chief of	Rodriguez Decl. ¶¶49-50, 10:5; 11:12
15	Police – the highest decision maker in the	
16	Department – had made the statement and was	
17	unapologetic.	
18	371. Plaintiff, as well as other officers were aware	E. Rodriguez Decl. ¶9, 3:18-25;
19	of Chief Stehr's comment, and it shook the	Karagiosian Decl., ¶15, 3:22-23; O.
20	confidence of most of the minority and female	Rodriguez Decl. ¶¶47-50, 9:22-10:9.
21	officers, including Plaintiff. The "zero tolerance of	
22	discrimination" policies appeared to be meaningless.	
23	372. Chief Stehr Admitted He Planned to	O. Rodriguez Decl. ¶8, 2:24-28; ¶54,
24	Retaliate Against Plaintiff. Lt. Omar Rodriguez	10:12-19.
25	was told by Chief Stehr that he was tired of	
26	Plaintiff's complaints about racism within the	
27	Department.	
28		

1	373.	
2	374. After Plaintiff had been passed over for a	O. Rodriguez Decl. ¶54, 10:12-19.
3	position with SRT, he complained to Lt. Omar	
4	Rodriguez that he had been passed over because of	
5	discrimination.	
6	375. Lt. Omar Rodriguez took Plaintiff's	O. Rodriguez Decl. ¶54, 10:12-19.
7	complaint that he had been passed over for SRT	
8	because of discrimination to Chief Stehr. Chief	
9	Stehr, upon learning that Plaintiff had complained	
10	stated that he was "tired of hearing Plaintiff's	
11	complaints" and that if he heard anymore, he would	
12	make sure that Plaintiff's career in BPD would go	
13	nowhere.	
14	376. Plaintiff Continued to Complain About the	E. Rodriguez Decl. ¶33, 7:2-5;
15	Hostile Work Environment. In April 2009,	Karagiosian Decl., 4:22-27.
16	Plaintiff and his fellow SED officer, Steve	
17	Karagiosian began hearing unpleasant and	
18	derogatory rumors about SED and about plans to	
19	disband the unit. Concerned, Plaintiff and	
20	Karagiosian approached Lt. Armen Dermenjian, who	
21	was in the chain of command over the SED.	
22	377. Dermenjian assured Plaintiff and Karagiosian	E. Rodriguez Decl. ¶33, 7:2-3;
23	that there were no plans to disband SED, that they	E. Rodriguez Decl. ¶38, 8:1-2;
24	were good officers, and that, in the unlikely event	Karagiosian Decl., ¶23, 4:24-27.
25	that the unit was disbanded, they would be	
26	reassigned to other specialized units.	
27	378. Plaintiff Complained About Racist	E. Rodriguez Decl. ¶25, 5:18-24;
28		

Comments Displayed on White Board. In April, 2009, Plaintiff noticed a white board in the hallway outside the Detective Bureau. The white board had a list of unique idioms that are frequently used by Armenians. However, the idioms had no substantive context. The list consisted of phrases such as, "My friend . . .," "... 100%," "I tell you everything . . . 100%," and "Sir, please, I beg you."

Karagiosian Decl., 3:8-13.

379. The phrases were not derogatory per se, but there was no substantive context to these phrases. The phrases bore no relationship to a list of clues, or checklists, or relationships between witnesses, evidence, or any other matter that would be of legitimate concern in a criminal investigation.

E. Rodriguez Decl. ¶25, 5:18-24;
Karagiosian Decl., 3:14-18.

380. Plaintiff was shocked and offended by the comments on the white board. Plaintiff showed the white board with the offending phrases to Karagiosian. Both Plaintiff and Karagiosian were incensed because there was no legitimate reason to list these idioms. The list of idioms were intended to ridicule and mock Armenians.

E. Rodriguez Decl. ¶28, 6:6-12;
Karagiosian Decl., ¶15, 3:18-23.

381. The white board had been left in a hallway visible to all – including BPD management– oblivious to the insulting impact it would inevitably have on the officers, witnesses, and suspects who saw it.

E. Rodriguez Decl. ¶27, 6:1-5;
Karagiosian Decl., ¶19, 4:13-15.

382. Plaintiff and Karagiosian agreed that they

E. Rodriguez Decl. ¶30, 6:17-20;

1	needed to bring the incident to the attention of their	Karagiosian Decl., ¶16, 3:24-25.
2	supervisor. Karagiosian said he would take their	
3	complaint to Lt. Dermenjian.	
4	383. Dermenjian later visited the SED office and	E. Rodriguez Decl. ¶32, 6:26-28; ¶30,
5	told Plaintiff and Karagiosian that they were foolish	6:18-20.
6	to complain and that it would damage their careers.	
7	Dermenjian told Plaintiff and Karagiosian that	
8	discrimination had been going on for years at BPD,	
9	that it will continue and that nothing can be done	
10	about it because you can not changed officers'	
11	beliefs. Dermenjian told Plaintiff and Karagiosian	
12	that he was concerned about Chief Stehr how would	
13	react if he heard yet another complaint about	
14	discrimination from them, but said he would relay	
15	their concerns to the Chief.	
16	384. A few days later, Dermenjian returned and	E. Rodriguez Depo., p. 201:3-210:6; E.
17	reported to Plaintiff and Karagiosian that the Chief	Rodriguez Decl. ¶29, 4:13-16; ¶31, 6:21-
18	said the comments related to a murder in which the	25; Karagiosian Decl., ¶18, 4:5-12.
19	victim, witnesses and probably the murderer were	
20	Armenian. There would be no further investigation	
21	into the relevance of the writings to the murder	
22	investigation or to determine the identity of the	
23	writer or writers.	
24	385. In April, 2009 Karagiosian told Plaintiff that	E. Rodriguez Depo., 416:18-417:25; E.
25	he had also heard a detective refer to a female	Rodriguez Decl. ¶29, 4:13-16; Karagiosian
26	Armenian murder victim as "not human."	Decl., ¶16, 3:24-27; Karagiosian Depo.,
27		542:1-543:10; 569:17-570:10.
28		

1	386. Plaintiff later learned that the Detective who	Karagiosian Depo., 100:23-101:16.
2	had written the offending comments received the	
3	lowest form of written discipline under BPD policies	
4	– an entry was made on a comment card.	
5	387. The Disbanding of SED. In early May	E. Rodriguez Depo., 230:225-231:15; E.
6	2009, Chief Stehr announced that he intended to	Rodriguez Decl. ¶34, 7:6-10; E. Rodriguez
7	disband the SED and send Plaintiff and Karagiosian	Decl., Exh. A and B.
8	back to Patrol.	
9	388. Plaintiff was informed in writing by Captain	E. Rodriguez Decl., Exh., A.
10	Lowers that the disbanding of SED “had nothing to	
11	do with [his] work performance” in SED and that she	
12	“was happy to have [him] working for [her].”	
13	389. The third member of the SED team, Sgt.	S. Karagiosian Decl., ¶30, 5:27-28.
14	Travis Irving, a Caucasian who did not complain	
15	about discrimination, was elevated to Adjutant to	
16	Chief Stehr.	
17	390. Chief Stehr announced a new unit which	E. Rodriguez Decl. ¶37, 7:20-26;
18	would perform a similar function to the SED the	Taylor Decl., ¶17, 6:12-17.
19	“SPU,” and invited “other” officers to apply.	
20	391. When Plaintiff and Karagiosian applied to be	E. Rodriguez Decl. ¶38, 8:2-4.
21	assigned to this new unit, the Chief announced that	
22	he no longer intended to create the new specialized	
23	unit.	
24	392. Plaintiff and Karagiosian requested that they	Karagiosian Depo., 15:15-21:25; E.
25	be assigned to the Monday, Tuesday and Wednesday	Rodriguez Decl. ¶40, 8:8-10.
26	shift in Patrol. Instead, they were assigned to the	
27	Thursday, Friday and Saturday shift.	
28		

1 393. The Thursday, Friday and Saturday shift is
2 considered to be the worst shift available within
3 Patrol . The officers who are normally assigned to
4 such are rookies and officers without any seniority.
5 Plaintiff and Karagiosian believed that they were
6 assigned to this shift as a punitive action.

Karagiosian Depo., 15:15-21:25; E.
Rodriguez Decl. ¶40, 8:8-10.

7 394. Throughout his tenure as Deputy Chief,
8 Taylor was consistently involved in any discussions
9 concerning major changes in Department
10 organization and reorganization.

Taylor Decl., ¶7, 4:8-11; ¶14, 5:14, 6:4;
¶18, 6:18-19.

11 395. One of the only occasions in which Chief
12 Stehr did not include Taylor was in discussions
13 about the future of SED. When Taylor learned about
14 the pending change, the decision had already been
15 made.

Taylor Decl., ¶14, 5:14-6:4.

16 396. Taylor was an active participant and provided
17 input to all discussions concerning the overall
18 budget, as well as the budgets for divisions, bureaus,
19 units and details. The SED budgetary issues were
20 resolved prior to Plaintiff being assigned to SED.
21 When Chief Stehr informally told Taylor that SED
22 would be disbanded, he never cited budgetary
23 concerns. Captain Janice Lowers did not raise any
24 budgetary concerns about SED. Instead, her
25 complaint was that the two police officers in SED
26 and most of the patrol officers who work with SED
27 "act like jerks."
28

Taylor Decl., ¶8, 4:12-13; ¶14, 5:14-6:4;
¶15, 6:5-9; ¶16, 6:10-11; E. Rodriguez
Decl., Exh. A.

1	397. Temporary FTO Position. Plaintiff applied	E. Rodriguez Decl. ¶42, 8:13-20.
2	for an assignment as a temporary training officer	
3	while the regular FTO was on vacation during the	
4	period from June 27 through July 4, 2009.	
5	398. Plaintiff had previously served as a FTO for	E. Rodriguez Decl. ¶11, 3:13-20.
6	nearly two years and had an exemplary track record	
7	as a FTO.	
8	399. The two officers who were selected for this	E. Rodriguez Decl. ¶42, 8:13-20.
9	temporary assignment lacked the minimal two years	
10	experience as a police officer required to be a FTO.	
11	The assignment was announced over the dispatch to	
12	everyone. Even the two rookies who were selected	
13	apologized to Plaintiff and told him their selection	
14	was unfair and wrong.	
15	400. Plaintiff had been a FTO to one of the	E. Rodriguez Decl. ¶42, 8:13-20.
16	officers selected for the FTO temporary assignment.	
17	His partner, Steve Karagiosian had been the FTO to	
18	the other officer selected.	
19	401. In Retaliation, the Department Seeks to	E. Rodriguez Depo., p. ____, lines ____;
20	Terminate Plaintiff. BPD conducted two	E. Rodriguez Decl. ¶ ____, p. ____, line ____
21	investigations concerning allegations of excessive	
22	use of force in conjunction with the armed robbery	
23	of Porto's Bakery, a local bakery/restaurant.	
24	402. In both of these previous investigations,	E. Rodriguez Depo., p. ____, lines ____;
25	Plaintiff was <u>only</u> interviewed, but to his knowledge,	E. Rodriguez Decl. ¶43, 8:22-24.
26	not investigated.	
27	403. After the disbanding of SED, in September	E. Rodriguez Decl. ¶43, 8:22-24
28		

1	2009, the Department launched yet a third	
2	investigation into the same incident. This time,	
3	based upon the testimony of a single officer, a	
4	known racist, Plaintiff was suddenly a target of	
5	investigation.	
6	404. On March 25, 2010, Plaintiff was placed on	E. Rodriguez Decl. ¶44, 8:25-28.
7	administrative leave.	
8	405. On March 30, 2010, Plaintiff was provided	E. Rodriguez Depo., p. ____, lines ____;
9	with a Proposed Notice of Termination.	E. Rodriguez Decl. ¶44, 8:25-28.
10	406. Inappropriate Race-based comments	Slor Deposition, 21:12-18; Slor
11	within the BPD. Inappropriate race-based	Deposition, 25:13-18; Deposition of
12	comments about Blacks, Armenians, Hispanics and	Anthony Valento Deposition ("Valento
13	others were made by police officers on duty at the	Depo.") (Attached to Thompson Decl. as
14	Burbank Police Department, as late as the three	Exhibit "F"), 54: 23-55:7; Valento
15	months between September, 2009 to November,	Deposition, 55:9-15; Valento Deposition,
16	2009.	55:17-21; Omar Rodriguez Deposition,
17		("O. Rodriguez Depo.") (Attached to
18		Thompson Decl. as Exhibit "G") 352:7-11.
19		
20		
21	407. Officer Kerry Schilf's nickname in the	Slor Deposition, Page 26, Lines 16 through
22	Burbank Police Department is "HITLER."	18.
23	408. Many race-based "jokes" at the Burbank	Deposition of Dannel Arnold ("Arnold
24	Police Department were made at roll call, in front of	Depo.")(Attached to Thompson Decl. as
25	numerous other officers and supervisors.	Exhibit "H"), 51:8-18.
26		
27	409. Officer, Jamal Childs complained to Officer	Karagiosian Deposition, 170:2-6.
28	Karagiosian of offensive race based comments made	

1	in front of "high ranking officials in our Department,	
2	and they think it's funny."	
3	410. Omar Rodriguez complained to Lieutenant	Deposition of John Murphy ("Murphy
4	Murphy about race-based discriminatory statements	Depo.")(Attached to the Thompson Decl.
5	made on a "grease board."	as Exhibit "T"), 62:3-63:4.
6		
7	411. Burbank Police Officers told jokes about	Arnold Deposition, 49:25-50:3; Deposition
8	those of Mexican-Armenian heritage.	of Angelo Dahlia ("Dahlia
9		Deposition")(Attached to Thompson Decl.
10		as Exhibit "J"), 129:6-17; Murphy
11		Deposition, 82:13-20; Arnold Deposition,
12		59:15-18. Omar Rodriguez Deposition,
13		369:10-17. Omar Rodriguez Deposition,
14		374:23-375:2.
15		
16	412. As a Burbank Police Officer, Dan Arnold	Arnold Deposition, 36:19-24.
17	was "uncomfortable because of racial remarks,	
18	attitudes towards different races, constant barrage of	
19	racial humor (and) the lack of integrity . . ."	
20	413. Race and Bias Issues within the BPD.	Arnold Deposition, 75:6-76:1.
21	Minorities were treated differently than Caucasians	
22	based on race by Burbank Police Officers. If you	
23	were a white male, "the chance of talking to you	
24	were slim to none. If you were a minority walking	
25	through the City at night, you were getting talked to	
26	every time."	
27	414. There is a huge bias against minorities in the	Arnold Deposition, 75:5-76:1.
28	City of Burbank.	

1	415. Detective Dahlia testified that inappropriate	Dahlia Deposition, 140:23-141:9.
2	race based language has never been acceptable, but	
3	all Burbank Police Officers he knows have been	
4	guilty of it during the past twenty years.	
5	416. Detective Dahlia admits to using the	Dahlia Deposition, 140:23-141:25
6	language described in his Deposition (between	(December 22, 2008 to December 22,
7	December 22, 2008 and December 22, 2009) while	2009); Dahlia Deposition, 146:11-147:4
8	on duty as a police officer "as just about everybody	(past twenty years).
9	else on the Police Department" but "its not used in a	
10	manner of- to discriminate that person directly."	
11	417. Detective Dahlia has heard these terms used	Dahlia Deposition, 147: 22-148:7.
12	by the majority of the people in the Department	
13	during the past twenty years "and that's the honest	
14	truth, whether you accept it or not, they are not used	
15	in the context of personally attacking a person."	
16	"It's a ugly business that we do. It's a stress relief	
17	sometimes. Is it right? No it's not. Absolutely not.	
18	But I have used those words and so have other	
19	people."	
20	418. Former Mayor of the City of Burbank,	Deposition of Former Mayor of the City of
21	Marsha Ramos, whose tenure ended in April 30,	Burbank, Marsha Ramos, Page 12, Lines 2
22	2009, had knowledge of racial issues and bias within	through 5 and Page 15, Lines 13 through
23	the Burbank Police Department during her tenure.	19 attached to Thompson Decl. as Exhibit
24		"L".
25		
26	419. Anonymous Letter of Complaint. In the	Deposition of Former Mayor of the City of
27	Fall, 2008, an anonymous letter was sent to the	Burbank, Marsha Ramos, Page 16, Line 23
28	Burbank City Counsel describing problems of racism	

1	and retaliation within the Burbank Police	through Page 17, Lines 6.
2	Department.	
3	420. The City Attorney's office advised the City	Deposition of Former Mayor of the City of
4	Counsel not to discuss or otherwise pursue any	Burbank, Marsha Ramos, Page 17, Line 20
5	matters listed in the anonymous letter, for fear of	through Page 18, Line 5; Deposition of
6	liability. The anonymous letter contained allegations	Former Mayor of the City of Burbank,
7	of discrimination and inappropriate treatment of	Marsha Ramos, Page 20, Lines 14 through
8	police officers. There were also references to	24.
9	inappropriate behavior of supervisors and	
10	commanding officers within the Department that	
11	went unreported. Certain Burbank Police Officers	
12	were "cited as using racial epithets."	
13	421. Prior to her leaving office, then Mayor	Deposition of Former Mayor of the City of
14	Marsha Ramos told City Manager, Mike Flad that if	Burbank, Marsha Ramos, Page 32, Line 16
15	matters were not resolved within the Police	through Page 33, Line 11.
16	Department soon, "the Department will probably fall	
17	apart."	
18	422. There's a culture within the City of Burbank,	Deposition of Former Mayor of the City of
19	for all Burbank employees called the "code." Within	Burbank, Marsha Ramos, Page 43, Line 2
20	the code you never say it out loud "is it because	through Page 44, Line 3.
21	you're Black?" "You don't say that out loud, you	
22	just don't."	
23	423. Marsha Ramos, during her tenure as Burbank	Deposition of Former Mayor of the City of
24	Mayor, was also aware of issues of sexual	Burbank, Marsha Ramos, Page 59, Line 21
25	harassment and gender-bias within the Burbank	through Page 60, Line 11; Page 60, Line
26	Police Department.	24 through Page 61, Line 1; Page 61, Lines
27		5 through 11.
28		

1	424. Nayari Nahabedian was hired by the City of	Deposition of Nayiri Nahabedian
2	Burbank to provide diversity training to the Burbank	Deposition, Page 16, Lines 2 through 23;
3	Police Department and its Officers	attached to Thompson Decl. as Exhibit
4		"K".
5		
6	425. Ms. Nahabedian, a human resources trainer,	Nahabedian Deposition, Page 19, Line 24
7	was informed when she arrived at the Burbank	through Page 20, Line 13.
8	Police Department that there existed issues of	
9	discrimination and harassment.	
10	426. At the time Ms. Nahabedian was hired, she	Nahabedian Deposition, Page 20, Lines 15
11	was informed that there were investigations into	through 21.
12	"race-based issues" in the Department.	
13	427. Ms. Nahabedian had been informed of	Nahabedian Deposition, Page 37, Lines 21
14	investigations in the Burbank Police Department	through 24.
15	based upon race, ethnicity and gender.	
16	428. Ms. Nahabedian informed then Chief Tim	Nahabedian Deposition, Page 59, Line 22
17	Stehr that she believed that the Burbank Police	through Page 60, Line 3.
18	Department had a problem with its attitudes towards	
19	separate races.	
20	429. Comments made to Ms. Nahabedian during	Nahabedian Deposition, Page 62, Lines 1
21	the training she performed led her to believe that	through 12.
22	racial intolerance was occurring within the Burbank	
23	Police Department.	
24	430. At least one Burbank Police Officer told Ms.	Nahabedian Deposition, Page 64, Line 20
25	Nahabedian that they were afraid to speak out of the	through Page 65, Line 1.
26	problems within the Burbank Police Department.	
27	431. Detective Dahlia "did not think very highly"	Dahlia Deposition, Page 148, lines 9
28	of the diversity training provided by Nayari	

1	Nahabedian.	through 22.
2	432. Detective Dahlia thought that the diversity	Dahlia Deposition, Page 149, lines 1
3	training provided by Nayari Nahabedian was simply	through 8.
4	"damage control."	
5	433. Nahabedian informed then Chief Stehr that	Nahabedian Deposition, Page 16, Line 24
6	one four-hour training was unlikely to solve the	through Page 17, Line 14.
7	Department's problems.	
8	434. At the time she was hired, then Chief Stehr	Nahabedian Deposition, Page 25, Lines 7
9	informed Ms. Nahabedian that the training was being	through 23.
10	performed to "avoid liability."	
11	435. Then Chief Stehr told Ms. Nahabedian that	Nahabedian Deposition, Page 26, Lines 13
12	the prior diversity training had occurred over ten	through 24.
13	years ago, in or about 1997.	
14	436. Many negative comments were made by	Nahabedian Deposition, Page 40, Lines 12
15	Burbank Police Department Officers following the	through 22.
16	training, which negative comments referred to the	
17	training.	
18	437. Many negative comments refer to the	Nahabedian Deposition, Page 42, Lines 3
19	impression that the diversity training was to "CYA"	through 11.
20	or "cover your ass."	
21	438. Another common complaint of Burbank	Nahabedian Deposition, Page 42, Lines 12
22	Police Officers with regard to the diversity training	through 15.
23	was "they should deal with those few people with a	
24	problem and not have us all sit in training."	
25	439. Another common complaint was that	Nahabedian Deposition, Page 43, Lines 5
26	minorities played the "race card," when they didn't	through 12; Page 46, Lines 9 through 19.
27	get promotions.	
28		

1	440. Another common complaint of Burbank	Nahabedian Deposition, Page 43, Line 21
2	Police Officers who attended the diversity training	through Page 44, Line 3.
3	was "why do we have to change the way we do	
4	things? If they came to this country, we shouldn't	
5	have to learn about their ways."	
6	441. Nahabedian was concerned by the overly	Nahabedian Deposition, Page 49, Lines 5
7	large number of Burbank Police Officers who	through 20.
8	expressed concerns of the diversity training.	
9	442. Many Burbank Police Officers told Ms.	Nahabedian Deposition, Page 52, Lines 7
10	Nahabedian at the end of the diversity training that it	through 10.
11	was "a waste of time."	
12	443. Burbank Police Officers who attended the	Nahabedian Deposition, Page 54, Lines 2
13	diversity training made jokes about the diversity	through 8.
14	training.	
15	444. Nahabedian expressed to the Burbank Police	Nahabedian Deposition, Page 55, Line 25
16	Department that more training needed to be done to	through Page 59, Line 8; Page 60, Lines 11
17	deal with diversity issues.	through 19; Page 60, Line 20 through Page
18		61, Line 7.
19		
20	445. As many as twenty different Burbank Police	Slor Deposition, Page 28, Lines 8 through
21	Officers regularly use the term "ZOG" to refer to	11; Dahlia Deposition, Page 121, Line 7
22	Black people. Slor recalls such term being used at	through Page 122, Line 2.
23	least a few years ago.	
24	446. The term "ZOG" is a racial term describing	Omar Rodriguez Deposition, Page 367,
25	any minority. It is used by white supremacist groups	Line 18 through Page 368, Line 12. Omar
26	to call minority groups a hateful term.	Rodriguez Deposition, Page 376, Line 13
27		through Page 377, Line 7.
28		

1	447. Burbank Police Officers have called African-	Dahlia Deposition, Page 123, Lines 5
2	Americans "Black Mother Fuckers, over the past	through 13.
3	twenty years."	
4	448. Many Caucasian Burbank Police Officers	Dahlia Deposition, Page 123, Lines 23
5	regularly refer to Blacks as "Niggers." Over the past	through 25; Dahlia Deposition, Page 131,
6	twenty years, Detective Dahlia has personally used	Lines 6 through 9; Dahlia Deposition,
7	the term "Nigger" to refer to black people while he	Page 145, lines 19 through 23; Murphy
8	was working at the Department.	Deposition, Page 84, lines 8 through 14.
9		
10	449. In November 2008, in front of assembled	Murphy Deposition, Page 54, line 7
11	group of Lieutenants, Captains, the Deputy Chief,	through 19; O. Rodriguez Decl., 47, 9:22-
12	and high ranking civilian employees, then Chief Tim	25; ¶48, 9:26-10:1.
13	Stehr opined that he could "remember a time when	
14	they would say 'nigger' at roll calls." When Chief	
15	Stehr later discussed the incident with Omar	
16	Rodriguez and asked what he thought, Lt. Rodriguez	
17	said that the use of the word was offensive. Chief	
18	Stehr responded angrily, "Fuck me!" and walked out	
19	of the room.	
20	450. Plaintiff Elfego Rodriguez heard from	E. Rodriguez Decl. ¶9, 3:9-11.
21	various police officers that then Chief Tim Stehr	
22	made the comment "I remember a time when you	
23	could say the word 'nigger' around here."	
24	451. Then Chief Stehr had made other	Valento Deposition, Page 56, Lines 4
25	inappropriate race-based jokes at the Burbank Police	through 19.
26	Department.	
27	452. The word "Nigger" was used by Burbank	Arnold Deposition, Page 37, lines 19
28	Police Officers just like "common conversation."	

1		through 21.
2	453. African Americans have been referred to as	Omar Rodriguez Deposition, Page 374,
3	"Niggers" by Burbank Police Officers.	Line 23 through Page 375, Line 2. Omar
4		Rodriguez Deposition, Page 376, Line 13
5		through Page 377, Line 3. Deposition of
6		Cindy Guillen-Gomez Deposition, Page
7		670, Line 22 through Page 671, Line 25
8		attached to Thompson Decl. as Exhibit
9		"M".
10		
11	454. Officers were discussing an African-	Arnold Deposition, Page 39, line 6 through
12	American woman who had been seen in the South	Page 41, Line 9.
13	end of Burbank. In front of the assembled officers at	
14	roll call, one officer called out "what's she doing up	
15	there, there ain't no fried chicken stores up there."	
16		
17	455. In a conversation referring to a male, black	Karagiosian Deposition, Page 277, Line 9
18	suspect, one officer commented "we should go check	through 22; Omar Rodriguez Deposition,
19	Popeye's Chicken."	Page 23, Line 2 through 15.
20	456. The following race-based "joke" was told by	Arnold Deposition, Page 49, lines 14
21	Burbank Police Officers: "What do you call a black	through 16.
22	man sitting in a tree with a bunch of monkeys?" The	
23	punchline was "Branch Manager."	
24	457. Another race-based "joke" told by Burbank	Arnold Deposition, Page 49, lines 17
25	Police Officers was: "What do you call 1,000 niggers	through 19.
26	at the bottom of the ocean? Answer: A good start."	
27	458. Another race-based "joke" that was told by	Arnold Deposition, Page 49, lines 20
28	Burbank Police Officers was: "A football field of	

1	niggers buried up to their necks? Afro-Turf.”	through 21.
2	459. Burbank Police Officers have referred to	Dahlia Deposition, Page 122, Line 8
3	Black individuals as “Miate.”	through Page 123, Line 4; (possibly within
4		the last year (December 22, 2008 –
5		December 22, 2009).)
6		
7	460. Officers at the Burbank Police Department	Arnold Deposition, Page 53, line 20
8	have referred to Black people as “Sambo.”	through Page 54.
9	461. Burbank Police Officers have referred to	Arnold Deposition, Page 53, line 20
10	Black people as “Porch Monkeys.”	through Page 54, Line 2.
11		
12	462. Burbank Police Officers would refer to	Arnold Deposition, Page 72, lines 4
13	mixed race individuals as “half-breeds.”	through 8.
14	463. In approximately 2003, a black female police	Deposition of Former Mayor of the City of
15	officer complained to then, City Council member	Burbank, Marsha Ramos, Page 19, Lines 6
16	Marsha Ramos that there is “no room for promotion”	through 15.
17	for Blacks or females within the Burbank Police	
18	Department.	
19	464. When Nahabedian was hired, she was	Nahabedian Deposition, Page 30, Line 19
20	informed by then Chief Stehr that there were	through Page 31, Line 5.
21	problems with race-based language in the	
22	Department including, without limitation, the “N”	
23	word.	
24	465. Sergeant Darren Ryburn has said “I guess it’s	Deposition of Childs, Page 51, Lines 2
25	true, once you go black, you never go back.”	through 11 attached to Thompson Decl. as
26		Exhibit “N”.
27	466. When Plaintiff Jamal Childs who is African-	Childs Deposition, Page 69, Line 19
28		

1 American assisted in the service of a warrant on the	through Page 70, Line 4.
2 famous rapper, Snoop Dog, Officer Aaron Kendrick	
3 said, "Why is Jamal here? Do we need him for	
4 translation?"	
5 467. After passing by an open doorway of an	Childs Deposition, Page 112, Line 14
6 office in the Burbank Police Department, Jamal	through Page 113, Line 7.
7 Childs, who is African-American heard unknown	
8 officers state "I remember when we didn't hire	
9 people like him."	
10 468. Upon entering a room one time, Officer	Childs Deposition, Page 115, Lines 14
11 Childs learned that Officer Jay Cutler had said "who	through 19.
12 let the black guy in?" which the other officers who	
13 were present found funny.	
14 469. One of Plaintiff Jamal Childs supervisors,	Childs Deposition, Page 121, Line 3
15 Sergeant Calicchio, after taking an arrest report, said	through Page 122, Line 16.
16 "who in their right mind would give a fucking black	
17 guy \$30,000?"	
18 470. Burbank Police Officers have referred to	Slor Deposition, Page 31, Line 19 through
19 Armenian individuals as "Armo's."	Page 32, Line 4 (within the last 2 years
20	(November 11, 2007 – November 11,
21	2009); Dahlia Deposition, Page 135, Lines
22	5 through 15 (within the last years
23	Novembver 11, 2008 – November 11,
24	2009). Karagiosian Deposition, Page 300,
25	Line 21 through 25. Omar Rodriguez
26	Deposition, Page 377, Line 2 through 13.
27	
28	

1		Omar Rodriguez Deposition, Page 384,
2		Line 23 through Page, 385 Line 12.
3	471. Burbank Police Officers have referred to	Slor Deposition, Page 31, Line 19 through
4	Armenian individuals as "Towelheads."	Page 32, Line 4 (within the last year
5		(December 22, 2008 – December 22,
6		2009); Dahlia Deposition, Page 132, Line
7		6 through Page 133, Line 2 and Dahlia
8		Deposition, Page 133, Lines 20 through 22
9		(within the last two years (November 11,
10		2007 – November 11, 2009); Arnold
11		Deposition, Page 57, lines 2 through 5.
12		
13		
14	472. Burbank Police Officers would call	Karagiosian Deposition, Page 169, Line 19
15	Armenians "towels."	through Page 170, Line 1. Karagiosian
16		Deposition, Page 302, Line 16 through 18.
17	473. Officer Kendrick has called Officer Steve	Childs Deposition, Page 62, Line 21
18	Karagiosian a "towel" and "stupid towel" on	through Page 63, Line 4; Page 119, Lines 2
19	numerous occasions.	through 19.
20		
21	474. Many Burbank Police Officers have referred	Dahlia Deposition, Page 132, Line 6
22	to Armenian individuals as "Fucking Armenians."	through Page 133, Line 2; Dahlia
23		Deposition, Page 134, Lines 14 through 23
24		(within the last year (December 22, 2008 –
25		December 22, 2009).))
26		
27	475. Burbank Police Officers would make fun of	Arnold Deposition, Page 67, lines 3
28	Armenians by speaking in a heavy Armenian accent.	through 14; Karagiosian Deposition, Page

1		42, Line 16 through Page 43, Line 15.
2	476. Officer Aaron Kendrick pointed a gun at	Karagiosian Deposition, Page 145, Line 16
3	Officer Steve Karagiosian and threatened to "put one	through Page 146, Line 7; Childs
4	in your ten ring before you can get out of your	Deposition, Page 81, Line 21 through Page
5	chair."	82, Line 16.
6		
7	477. Offensive race based slurs against Armenians	Karagiosian Deposition, Page 92, Line 20
8	were written on a white board in the Detective's	through Page 93, Line 4. Omar Rodriguez
9	Office at the Burbank Police Department.	Deposition, Page 339, Line 4 through Page
10		340, Line 11.
11		
12	478. Burbank Police Officers have referred to	Dahlia Deposition, Page 129, Lines 6
13	Hispanic individuals as "Wetbacks."	through 17 (within the last year (December
14		22, 2008 – December 22, 2009)); Murphy.
15		Deposition, Page 82, lines 13 through 20;
16		Arnold Deposition, Page 59, lines 15
17		through 18; Omar Rodriguez Deposition,
18		Page 369, Line 10 through 17; Omar
19		Rodriguez Deposition, Page 374, Line 23
20		through Page 375, Line 2.
21		
22	479. As many as twenty Burbank Police Officers	Dahlia Deposition, Page 129, Line 24
23	have referred to Hispanic individuals as "Mojados,	through Page 131, Line 6 (December 22,
24	Moes or Mopes" within the last year.e	2008 – December 22, 2009).
25		
26	480. Burbank Police Officers have referred to	Karagiosian Deposition, Page 336, Line 18
27	Latinos as "Moes, within the last year."	through 19 (December 22, 2008 –
28		December 22, 2009).

1	481. Burbank Police Officers have referred to	Dahlia Deposition, Page 131, Lines 10
2	Hispanic individuals as "Spics."	through 12.
3	482. Burbank Police Officers have called Hispanic	Dahlia Deposition, Page 197, lines 18
4	individuals "Julios."	through 25. Karagiosian Deposition, Page
5		303, Line 13 through 15. Omar Rodriguez
6		Deposition, Page 369, Line 10 through 17.
7		
8	483. Burbank Police Officers have referred to	Dahlia Deposition, Page 201, lines 10
9	Hispanic individuals as "Beaners over the past	through 19; Murphy Deposition, Page 82,
10	twenty years."	lines 24 through Page 83, line 3.
11	484. Burbank Police Officers have referred to	Dahlia Deposition, Page 203, lines 9
12	Hispanic individuals as "Fucking Mexicans."	through 12.
13		
14	485. Burbank Police Officers have referred to	Murphy Deposition, Page 83, lines 5
15	Hispanic individuals as "Taco Vendor".	through 9.
16	486. Hispanics have been referred to by Burbank	Karagiosian Deposition, Page 305, Line 10
17	Police Officers as "Gardeners."	through 12.
18		
19	487. Hispanic individuals were referred to by	Arnold Deposition, Page 57, lines 10
20	Burbank Police Officers as "Paco."	through 20.
21	488. Burbank Police Officers referred to Hispanic	Dahlia Deposition, Page 202, lines 9
22	individuals as "Mexicans," regardless of their	through 24 (December 22, 2008 –
23	country of origin within the last year.	December 22, 2009); Arnold Deposition,
24		Page 53, lines 1 through 14.
25	489. The term "Mexican" is used interchangeably	Dahlia Deposition, Page 202, lines 9
26	by Burbank Police Officers with the terms "Latino"	through 24 (December 22, 2008 –
27	or "Hispanic within the last year."	December 22, 2009); Arnold Deposition,
28		

1		Page 53, lines 1 through 8.
2	490. Detective Dahlia has referred to Latinos as	Dahlia Deposition, Page 202, line 25
3	"Mexicans," without knowing their country of origin	through 203, line 8 (December 22, 2008 –
4	perhaps in the last year.	December 22, 2009).
5		
6	491. One of the race-based "jokes" told by	Arnold Deposition, Page 50, lines 20
7	Burbank Police Officers was as follows: "How come	through 25.
8	there were only 2,000 Mexicans at the Alamo?" The	
9	punchline was: "There was only one car."	
10	492. Hispanic suspects were booked in to the	Arnold Deposition, Page 68, lines 16
11	records at the Burbank Police Department as "Juan	through 20.
12	Doe."	
13	493. Burbank Police Officers have stated "Why do	Karagiosian Deposition, Page 287, Line 1
14	we have Mexicans in our city? Look at the places	through 11.
15	they live. They fucked that up. "	
16	494. Burbank Police Officers refer to Asian	Arnold Deposition, Page 80, lines 9
17	people with the language "me fucky-sucky."	through 15.
18	495. Burbank Police Officers would joke about	Arnold Deposition, Page 80, lines 22
19	Asian people by saying things in an Asian accent	through 25.
20	like "Hey, Joe," "you like good time, Joe?" The	
21	word "Joe" was used a lot.	
22	496. Plaintiff Cindy Guillen-Gomez has been	Slor Deposition, Page 49, Lines 11 through
23	referred to by Burbank Police Officers as "Bitch."	23.
24		
25	497. Burbank Police Officers have referred to	Dahlia Deposition, Page 198, lines 9
26	women as "dykes."	through 16; Murphy Deposition, Page 85,
27		lines 13 through 19.

1	498. Burbank Police Officers would opine that	Arnold Deposition, Page 69, lines 15
2	"women had no business being on the police force."	through 18.
3	499. Plaintiff Cindy Guillen-Gomez complained	Arnold Deposition, Page 91, lines 5
4	that females were being referred to by Burbank	through 10.
5	Police Officers as "Tuna Boats."	
6	500. Plaintiff Cindy Guillen-Gomez complained	Arnold Deposition, Page 91, lines 5
7	that females were being referred to by Burbank	through 10.
8	Police Officers as "Split Tails."	
9	501. Police Officers at the Burbank Police	Guillen-Gomez Deposition, Page 668,
10	Department have used the term "cunt" to refer to	Line 25 through Page 669, Line 4.
11	women.	
12	502. Certain Burbank Police Officers have called	Guillen-Gomez Deposition, Page 669,
13	women "whores."	Line 19 through 21.
14	503. Plaintiff Cindy Guillen-Gomez was	Guillen-Gomez Deposition, Page 680,
15	threatened that if she wouldn't be quiet she would be	Line 24 through 25.
16	"fucked in the ass."	
17	504. One example of sexual harassment, Ms.	Nahabedian Deposition, Page 62, Line 14
18	Nahabedian discovered was naked pornographic	through Page 63, Line 4.
19	pictures on a certain Burbank Police Officer's	
20	locker.	
21	505. Burbank Police Officers have referred to men	Dahlia Deposition, Page 199, lines 19
22	as "homos within the past twenty years."	through 21. Guillen-Gomez Deposition,
23		Page 670, Line 8 through 10.
24	506. Lieutenant Murphy has heard people being	Murphy Deposition, Page 85, lines 5
25	referred to as "Fags" by Burbank Police Officers.	through 11.
26		
27	507. Burbank Police Officers would refer to	Arnold Deposition, Page 60, line 23
28		

1	individuals as "fag" or "faggot."	through Page 61, Line 1. Guillen-Gomez
2		Deposition, Page 670, Line 8 through 10.
3	508. Burbank Police Officers have engaged in	Slor Deposition, Page 53, Lines 5 through
4	racial profiling, that is identifying and stopping	14.
5	people based on their race in order to search for	
6	evidence of a crime.	
7	509. The minorities which are subjected to race-	Slor Deposition, Page 53, Lines 16 through
8	based profiling at the Burbank Police Department are	25.
9	Hispanic, Black and Armenian.	
10	510. One Burbank Police Officer mocked a black	Arnold Deposition, Page 44, line 13
11	youth, who had been pulled over by Burbank Police	through Page 46, Line 6.
12	Officers approximately five times in his evening trip	
13	through Burbank on his bicycle, saying in an	
14	"ebonics" accent, "well, then don't ride your ass	
15	through Burbank at night."	
16	511. Burbank Police Officers target Armenian	Slor Deposition, Page 32, Lines 8 through
17	citizens for traffic stops based on race.	12.
18		
19	512. One way the Burbank Police Department	Slor Deposition, Page 56, Lines 10 through
20	would profile Armenians, was to pull over high-end	20.
21	expensive cars because they lacked either front	
22	license plates or had tinted windows (minor	
23	violations) simply because they were being driven by	
24	Armenians.	
25	513. Burbank Police Officers would wait near	Arnold Deposition, Page 75, line 6 through
26	Armenian clubs and wait for individuals of	Page 76, Line 1.
27	Armenian descent to leave the club so they could	
28	affect traffic stops, and then they would joke about it	

1	in an "Armenian type dialect."	
2	514. Burbank Police Department engages in race	Arnold Deposition, Page 79, lines 4
3	based profiling in police stops.	through 8. Karagiosian Deposition, Page
4		307, Line 22 through 25.
5	515. Lt. Omar Rodriguez, since approximately	Omar Rodriguez Deposition, Page 225,
6	January 2007, was responsible to recruit and hire	Line 23 through Page 226, Line 6. Page
7	officers for the Burbank Police Dept. Lt. Rodriguez	235, Line 3 through 8. Page 239, Line 13
8	became aware that the Detectives who had been	through Page 240, Line 6.
9	conducting the background investigations were	
10	inappropriately disqualifying minorities and females	
11	from the background process.	
12	516. Beginning in approximately December 2006,	Omar Rodriguez Deposition, Page 248,
13	through January 2007, Lt. Rodriguez began getting	Line 23 through Page 249, Line 12.
14	complaints from officers that they had been	
15	subjected to unfair treatment and race-based	
16	comments. Lt. Rodriguez continued to receive these	
17	complaints through April 2009.	
18	517. Lt. Omar Rodriguez reported complaints of	Omar Rodriguez Deposition, Page 319,
19	patrol officers of unfair treatment, harassment and	Line 9 through Page 320, Line 14.
20	discrimination to then Chief Tim Stehr on more than	
21	a dozen occasions, several times in writing.	
22	518. On Easter Sunday, 2009, Omar Rodriguez	Deposition of Former Mayor of the City of
23	complained to then Mayor Marsha Ramos of	Burbank, Marsha Ramos, Page 23, Line 22
24	problems within the Department including, without	through Page 24, Line 24.
25	limitation, discriminatory hiring practices.	
26	519. On Easter Sunday, 2009, Omar Rodriguez	Deposition of Former Mayor of the City of
27	complained to then Mayor Marsha Ramos that Bill	Burbank, Marsha Ramos, Page 25, Line 3
28		

1 Taylor (Deputy Chief) was going to be unfairly	through Page 26, Line 1; Page 26, Lines 2
2 demoted and blamed for problems within the	through 10.
3 Department in exchange for favors to certain officers	
4 on the Burbank Police Officers' Association.	
5 520. Then Deputy Chief Bill Taylor complained to	Deposition of Former Mayor of the City of
6 then Mayor Marsha Ramos that the police	Burbank, Marsha Ramos, Page 37, Lines 2
7 department had issues of discrimination and	through 12.
8 retaliation and "it's an environment where people are	
9 fearful."	
10 521. On Easter Sunday, 2009, Omar Rodriguez	Deposition of Former Mayor of the City of
11 complained to then Mayor Marsha Ramos that he	Burbank, Marsha Ramos, Page 40, Line 16
12 was afraid of retaliation within the Burbank Police	through Page 41, Line 3.
13 Department.	
14 522. In December, 2009, after former Mayor	Deposition of Former Mayor of the City of
15 Marsha Ramos left office, she met with City	Burbank, Marsha Ramos, Page 51, Line 16
16 Manager, Mike Flad at lunch. At that time, Mike	through Page 52, Line 23.
17 Flad informed her that the City's internal	
18 investigations, along with the Sheriff's Department	
19 and FBI investigations would wrap up in the first	
20 quarter of 2009, and "there were going to be a lot of	
21 terminations, top to bottom," regardless of the results	
22 of the investigations.	
23 523. There was a widespread and very big	Valento Deposition, Page 25, Line 25
24 problem within the Burbank Police Department	through Page 26, Line 21.
25 concerning the Department's failure to respond to	
26 complaints from officers and with retaliation.	
27 524. Burbank Police Officers are subjected to	Valento Deposition, Page 28, Line 2
28	

1	retaliation for standing on their rights.	through Page 29, Line 9.
2	525. Then Chief Tim Stehr would retaliate against	Valento Deposition, Page 29, Lines 19
3	Burbank Police Officers who complained by	through 25.
4	changing their performance reviews.	
5	526. At the time of the filing of the Complaint in	Dahlia Deposition, Page 205, Lines 4
6	this action, the Burbank Police Department had four	through 20.
7	(4) sworn African-American police officers, just	
8	over two percent (2%).	
9	527. No African-American police officer has ever	Dahlia Deposition, Page 205, Lines 4
10	received a promotion of any kind in the history of	through 20.
11	the Burbank Police Department.	
12	528. As of year end 2009, twelve percent (12%) of	Thompson Decl., Exhibit "A".
13	all police officers employed at the Los Angeles	
14	Police Department ("LAPD") were African-	
15	American.	
16	529. As of year end 2009, between twelve percent	Thompson Decl., Exhibit "A".
17	(12%) and eighteen percent (18%) of all police	
18	officers employed at the Los Angeles Police	
19	Department ("LAPD") of rank Detective or higher	
20	were African-American.	
21	530. As of year end 2009, ten percent (10%) of all	Thompson Decl., Exhibit "A".
22	police officers employed at the Los Angeles	
23	Sheriff's Department were African-American.	
24	531. As of year end 2009, eighteen percent (18%)	Thompson Decl., Exhibit "A".
25	of all police officers employed by the Pasadena	
26	Police Department were African-American.	
27	532. Burbank Police Officer Supervisors	Karagiosian Deposition, Page 323, Line 6
28		

1	discriminate against minorities in terms of	through Page 325, Line 3.
2	assignments and shift selection.	
3	533. As of the last statistical report done on the	Thompson Decl., Exhibit "A".
4	composition of the BPD in 2000, Hispanic officers	
5	comprised just ten percent (10%) of the BPD force,	
6	while their counterparts at the LAPD held almost	
7	one third (33%) of the available positions, those at	
8	the LASD held 26 percent (26%) of all positions,	
9	and those at the PPD held thirty percent (30%) of all	
10	positions.	
11	534. In December, 2009, City Manager, Mike	Ramos Depo., 51:16 through 52:18.
12	Flad, told former Mayor, Marsha Ramos, that	
13	officers would be fired "top to bottom," regardless of	
14	the outcome of the investigation.	
15	535. Deputy Chief Bill Taylor told City Manager,	Taylor Decl., ¶14, p. 5, line 26 through p.
16	Mike Flad, that Chief Stehr was retaliatory against	6, line 4.
17	the "minority officers" by disbanding SED.	

18
19 Dated: April 28, 2010

LAW OFFICES OF RHEUBAN & GRESEN

20
21 By: 

22 Robert C. Hayden
23 Attorneys for Plaintiffs
24
25
26
27
28